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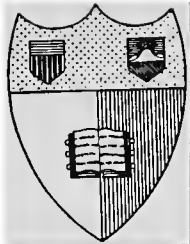
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1891

THE
SPEECH OF CICERO
FOR
CLUENTIUS.

Translated into English
WITH AN INTRODUCTION AND NOTES

BY

W. PETERSON, M.A.,

LATE SCHOLAR OF CORPUS CHRISTI COLLEGE, OXFORD;
PRINCIPAL AND PROFESSOR OF CLASSICS, UNIVERSITY COLLEGE,
OUNDEE.

Oxford:
JAMES THORNTON, HIGH STREET

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*THE SPEECH OF CICERO FOR
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PUBLISHED BY
JAMES THORNTON, OXFORD.

LONDON: SIMPKIN, MARSHALL, AND CO.

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WITH AN INTRODUCTION AND NOTES

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OF EDINBURGH.

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PREFACE.

THIS book may be of service to students who know how to use a translation executed with accuracy, and which aims at reflecting the style and language of its original as nearly as is consistent with difference of idiom. It may also interest such English readers as may care to make the acquaintance, under Cicero's guidance, of a distinguished company of criminals.

It has had the advantage of revision in considerable parts by Professor Nettleship, who also kindly placed his notes at the translator's disposal. They have been distinguished by his initials; but this hardly indicates the extent of the obligation incurred, as Mr. Nettleship made several corrections and suggestions which it would not be possible to acknowledge in detail.

The text followed in the main is that of Baiter and Kayser, Leipsic, 1862. The two MSS. on which they chiefly rely are referred to in the notes as S and T, and correspond to the A and B of Classen's edition. They are (1) the Codex Salisburgensis aulicus 34, nunc Monacensis Latinus 15734, and (2) the Codex Laurentianus xlviii. 12, sive Langomarsinianus 12.

THE UNIVERSITY, EDINBURGH,
November, 1881.

ANALYSIS.

SECTIONS.

- 1—8. *Introductory*: Cicero states that he will follow the example of his opponent Accius and divide the case into two parts (*invidia—crimina*). He appeals to the jury to lay aside all prepossessions and accord him a fair hearing.
- 9—160. *First division of the case*: the existing prejudice against Cluentius rests on the unfounded belief that he had procured the conviction of Oppianicus by bribery.
- 9—18. Family of Cluentius: origin of the feud between him and his mother Sassia.
- 19—42. His motive for impeaching Oppianicus eight years before: crimes of the latter.
- 43—61. Collision between Cluentius and Oppianicus. Detection of a plot on the life of Cluentius: conviction of Fabricius and Scamander,—and, by implication, of Oppianicus, who had thus every motive to practise bribery.
- 62—76. His dealings with Staienus: knavish conduct of the latter.
- 77—87. The prejudice against Cluentius due to the political agitation of the tribune Quinctius. His innocence proved from his account-books, whereas there is no plausible explanation of the transaction between Oppianicus and Staienus.
- 88—102. The previous verdicts quoted against Cluentius should not be allowed to prejudice his case, for various reasons.

SECTIONS

- 103—116. Commendation of the jurors who condemned Oppianicus: acquittal of Falcula: conviction of the others solely owing to the bad feeling excited by Quinctius.
- 117—134. The censors' stigma cannot rank as a judicial precedent.
- 135—137. The resolution of the senate was adopted merely to meet an emergency; was most guarded in its terms; and was never made law.
- 138—142. Retraction of what had previously been said in ignorance of the facts.
- 143—160. Cluentius will not avail himself of the protection of the letter of the law, though he could do so in all justice, not being liable as an *eques*.
- 161—164. Refutation of unfounded aspersions on the personal character of Cluentius.
- 165—194. *Second division of the case*: Cluentius is innocent of the deaths of Vibius Capax and Balbutius, as well as of that of Oppianicus.
- 165—168. Circumstances attending the deaths of Vibius and Balbutius.
- 169—194. Cluentius had no motive for attempting the life of Oppianicus. The evidence put forward as implicating him is utterly valueless; and the prosecution is altogether due to the unnatural hatred of his mother, Sasia.
- 195—202. *Conclusion*: Cluentius deserves sympathy as the son of such a mother. His fellow-townsmen and others bear testimony to his high character.

INTRODUCTION.

INTRODUCTION.

I.

THE speech for Cluentius is one of the most interesting monuments of Roman oratory. The rhetorical literature of Greece, of which the extant specimens are more diverse, and are not limited to a single name like that of Cicero, contains nothing that gives us a greater revelation of the circumstances of private life, nor anything that admits of more direct comparison with the lines of a modern pleading. The defendant is impeached for poisoning before a Roman jury, at the instance of his own mother ; and his advocate meets the issues involved in the case in a manner which sometimes reminds us of the eloquence of a Queen's Counsel in a criminal trial at the present day. The judicial oratory both of Athens and of Rome is commonly charged with being often wide of the mark at which it aimed, and with allowing the introduction of arguments which would be inadmissible now that legislation has been more fully systematised, and less opportunity is given the advocate of appealing to considerations of equity and common sense on the part of a mixed body of jurors. But the speech before us is much less liable than others to this criticism ; for though the indictment against Cluentius was nominally brought under a definite statute, it depended mainly on extraneous matter of great interest not only in itself but also by reason

of its connection with one of the burning questions of the day—the administration of justice in the public law-courts. The latitude of treatment observable in Cicero's speech for the accused is not therefore without justification. It would have been no easy matter for an advocate to approach the case that had been stated by the opposite side in that unimpassioned mood which is proper to most judicial pleadings. Here was a mother appearing at the bar of a court of justice to prosecute the son of her bosom on a charge of having first by foul means procured the ruin and conviction of her guiltless husband, and of afterwards taking his life by poison. This in itself must naturally have aroused a strong feeling of prejudice against the defendant; and there was the additional complication that the verdict of the jury in the case where Cluentius had prevailed over his step-father had for long been cited as a glaring example of miscarriage of justice. What then must Cicero's feelings have been if, as might fairly enough be inferred from the great appearance of candour maintained throughout the speech, he really believed in his client's innocence? He seeks to combat the prepossessions of his audience by first painting the characters both of husband and wife in their true colours, and then by showing the groundlessness of the charge of corruption made against the son; and after conducting a most complex and intricate case in a manner as remarkable for its eloquence and force as for the careful arrangement of the facts and the ingenuity displayed in the general management of the argument, he finishes by claiming the sympathy of his hearers for a son whose whole life had been one series of persecutions at the hands of a mother whose character and conduct could only excite the most utter horror.

The value of the oration would have been greatly enhanced if the address of the counsel for the prosecution had also been handed down to us ; but even with our imperfect knowledge of the real nature of the points at issue between the contending parties we can construct a picture of provincial society in the last days of the Republic for which materials are elsewhere almost entirely wanting. The narrative of Cicero, highly coloured as it evidently is by political and partisan considerations, is far from being the unbiassed record of an impartial historian ; but the main outlines of the drama of real life portrayed by him may be accepted without reserve, and serve to point the contrast between the old-fashioned virtue of the early Italian yeomen and that decay of manners which began with Rome's foreign conquests and finally culminated in the downfall of the empire. Much of the now widespread disorganisation of society may be directly attributed to the evil results of the Social War and of the civil strife so long waged between Marius and Sulla. License and disorder had everywhere supplanted the former taste for agricultural pursuits ; brigandage had increased to a degree previously unknown ; and it was accordingly to the still unsettled population of the provinces that Catiline not long afterwards looked for support in the struggle he attempted to carry on against the constituted authorities of the capital.

The trial at which the speech was delivered was held in the year of Cicero's prætorship, B.C. 66. The defendant, A. Cluentius of Larinum, had been impeached under the Lex Cornelia de Sicariis et Veneficis at the instance of the younger Oppianicus ; and the case against him was conducted by T. Accius, a Roman knight of Pisaurum, in Umbria. The charge directly preferred

against Cluentius was that he had by poison procured the death of Oppianicus the elder, his own step-father, as well as of two other persons; but the prosecution rested mainly on the prevailing belief that eight years previously Cluentius had employed corrupt means to secure his step-father's conviction for an alleged attempt on his life. For the facts of the case we are almost entirely dependent on the narrative of the text. That it contains an admixture of misrepresentation cannot reasonably be doubted, and seems to have been admitted by Cicero himself, as he is reported by Quintilian to have boasted that he had "thrown dust in the eyes of the jury."¹ While we cannot suppose that, in presence of the leading townsmen of Larinum, he would have ventured altogether to falsify facts with which many of his audience must have been sufficiently familiar, the orator's avowed change of attitude towards the whole case, together with his general conduct of the defence, the almost entire absence of direct proof, and certain suggestive improbabilities of statement, cannot fail to put the reader on his guard against accepting in all its details the story now to be related.

Larinum was a township of the Frentani, near the northern border of Apulia and not far from the shores of the Adriatic. There, in B.C. 88, the elder Cluentius had died, leaving his widow Sassia in charge of two children, the defendant A. Cluentius, then a boy of fifteen, and his sister Cluentia, probably a year or two older. Not long after her father's death Cluentia married her first cousin, A. Aurius Melinus; and it is to the circumstances by which the harmony of this union was destroyed that

¹ "Se tenebras offudisse iudicibus in causa Cluenti gloriatus est."
—*Quint. Inst.* ii. 17, 21.

Cicero attributes the deadly feud between Cluentius and his mother which culminated in the present action. For Sasia grew enamoured of her son-in-law, who soon divorced the daughter and installed the mother in her place.

About the same time the elder Oppianicus became suspected of having been concerned in the death of one M. Aurius, a kinsman of Melinus. His antecedents were not such as to inspire confidence in his innocence. His first wife had been a Cluentia, sister of the defendant's father, and of her he was said to have rid himself by poison. Insatiable avarice seems in general to have been the motive of his many enormities, which are circumstantially narrated by Cicero in the beginning of his speech, obviously with the view of predisposing the jury to believe that he could not possibly have escaped the hands of justice at the trial previously instituted by Cluentius. On the death of his first wife he seems to have allied himself with the family of Dinæa, a rich old lady of Larinum, whose son he was now suspected of having put to death. Dinæa had already survived three of her children, one of whom was Magia, the daughter whom Oppianicus had married; and now in her declining years her heart was gladdened by the news that her eldest son, M. Aurius, who had not been heard of since he was taken prisoner in the Social War, was still alive, though in slavery. But this intelligence was not equally pleasing to her late son-in-law Oppianicus, who had calculated on being able to secure her whole inheritance for his son by Magia. Accordingly immediately on Dinæa's death, which happened opportunely at this time,¹ he contrived to effect the murder

¹ In connection with Dinæa's death, it has been noticed that Cicero does not at first commit himself to saying that it was due to foul play (*vide* note on sec. 22). She left the bulk of her fortune to her

of M. Aurius before he could be restored to his native place. But the anger of his fellow-townsmen was at length aroused against him. Forced to fly from Larinum, he betook himself to the camp of Q. Metellus, who had lately come over from Africa to co-operate with Sulla against the party of Marius. His absence however was not of long duration. In the troublous times that ensued he returned to Larinum, armed as would appear with authority from Sulla to deal with any who might have shown themselves the enemies of his now victorious cause. He seems to have availed himself to the full of the powers thus conferred, and among his victims was A. Aurius Melinus, the husband of Sassia.

Oppianicus seems to have been a man of considerable personal attractions. He had already buried two wives, Cluentia and Magia. A third, Papia, probably identical with the woman whose unnatural guilt is recorded without any mention of her name (34), had apparently been divorced, and was bringing up her boy in retirement at Teanum. She seems to have been succeeded by Novia, who had lately borne a son (*filius infans*, 28), but whether Novia was now alive or not does not appear from the text. In any case the facilities of divorce at this period would make her existence no bar to the accomplishment of her husband's schemes. Attracted doubtless by the immense wealth of the now widowed Sassia, Oppianicus became a suitor for her hand. Far from reproaching him with the murder of her late husband, Sassia could find nothing to object to in the proposal beyond the fact of his having three children.

grandson, Oppianicus the younger, and only a legacy to her long-lost son. With this one might have thought Oppianicus would have been content.

This was an obstacle which a man like Oppianicus could easily remove. His two children by Papia and Novia are suddenly taken ill and die ; and with this proof of his attachment Sassia would appear to have been content, as his eldest son who bore his name survived to institute the present prosecution.

The severance of Cluentius from his mother was now complete, and if we may trust Cicero's narrative there was certainly enough in her conduct to justify it. A local incident which occurred about the same time served to bring out in strong relief the latent antagonism between him and his mother's new husband. There was at Larinum an ancient College of Mars, the members of which, like the Venerei of Mount Eryx in Sicily, seem to have occupied a vaguely-defined position intermediate between slaves and freemen. From some corrupt motive however, Oppianicus began suddenly to maintain that they were all Roman citizens ; and the town council took steps to resist this innovation. The case was sent up to Rome as affecting the *ius civitatis*, or rights of Roman citizenship, and Cluentius was charged by the community to protect their interests. Accordingly he proceeded to the capital, probably not unwilling, in spite of what Cicero says, to embrace the opportunity of appearing in a capacity for which the education of the day was intended especially to fit the youth of the country. It was no secret at this time that he had not as yet made any will, from inability to decide how he should deal with his mother ; and the calculation that in the event of his dying intestate his property would revert to her, as well as resentment against him for coming forward to oppose the claim of the Martiales, is said to have prompted Oppianicus to contrive the villany for which he was subse-

quently condemned. Keeping carefully in the background himself, he employed the services of a certain C. Fabricius, through whom overtures were made to the slave of the physician who was at the time in attendance on Cluentius. The latter was however duly informed of the plot on his life, and a trap was set by which Scamander, the freedman of Fabricius, was surprised in the act of receiving poison from his supposed accomplice, and of paying him a sum of money as an equivalent for the same.

Their intended victim promptly took steps to bring the criminals to justice. Scamander, Fabricius, and Oppianicus were impeached one after the other before the court in which C. Junius administered the law of poisoning and assassination. Cicero himself appeared on behalf of Scamander, but professes in the speech before us to have soon discovered the weakness of his case. His client was all but unanimously condemned, and the jury proceeded to hear the charge against Fabricius. He too was convicted without hesitation. At the trial of Scamander one vote had been given in favour of acquittal, that of Staienus, a needy and disreputable senator; and it was the hope of developing the understanding which had already begun to subsist between them that, according to Cicero, induced Oppianicus to face the desperate chances of a verdict. He furnished Staienus with the sum of 640,000 sesterces (about £6,400) for distribution among sixteen members of the bench, whose votes together with his own would secure a majority of the whole thirty-two. Staienus made overtures to such of the jurors as he knew were open to a bribe, but secretly resolved to keep the whole sum to himself, calculating that the inevitable verdict of guilty would deprive Oppi-

amicus of every chance of reclaiming the money from him. So after the interval of a day or two he told those whose votes he was understood to have secured that Oppianicus had played him false and did not mean to pay; and that the best thing they could do would be to follow the example he would set, and revenge themselves by voting for a conviction. The lot decreed that Staienus and two of his friends should be the first to record their verdict; and as there was a general suspicion that they had been bribed in favour of the defendant, the surprise was great when all three voted against him. The other jurors were sorely puzzled, and some began to believe that it was Cluentius who had been practising bribery. So while a considerable number held the charge 'not proven,' five actually voted for acquittal; and it was only by a narrow majority that Oppianicus was declared guilty.

This was in B.C. 74, when a movement was beginning to be made in favour of the repeal of Sulla's reactionary legislation. The tribune Quinctius accordingly seized the opportunity of making the corruption which had undoubtedly been practised at the trial the pretext for a wider agitation in favour of the restoration of the judicia to the equites. The suspicion that an innocent man had been unjustly condemned was fostered by his impassioned harangues, and a series of proceedings was instituted which proved fatal to a considerable number of those who had been instrumental in procuring the conviction of Oppianicus. Junius, the President of the Court, was impeached on technical grounds and found guilty. Several of the jurors were brought to trial on divers charges, but the real motive of the prosecution seems to have been in each case the widespread feeling of indignation which prevailed against the bench to which they

had belonged. One only was directly impeached, first for an irregularity of which he had been guilty, and again on the express charge of having received a bribe from Cluentius ; but in both cases he was acquitted. The censors affixed their official stigma against the names of three of the jurors ; and finally the senate passed a formal resolution denouncing the conduct of such persons as might have been guilty of bribery at a criminal trial. For the eight years which passed between the conviction of Oppianicus and the present action the venality of the " iudicium Iunianum " was a byword among the people, and no one would hear a word in exculpation of Cluentius.

About two years after the trial ¹ Oppianicus met his death by a fall from his horse. Sassia endeavoured at the time to wring from certain slaves under torture some declaration that would compromise her son, but her attempt entirely failed of its object. Some three years afterwards one of these slaves—Strato, whom she had purchased from the doctor who had attended her husband in his last illness—committed a theft and a double murder in her house ; and his mistress seized the opportunity of again putting him to the torture, along with Nicostratus, a slave of the younger Oppianicus. This time she professed to have extorted some sort of declaration of her son's guilt in the matter of his step-father's death ; and on that ground she induced the younger Oppianicus to institute the present proceedings. But the document she produced in court contained no reference to the crimes for which Strato had been put to the

¹ The date may be inferred from sec. 179, from which it would appear that Oppianicus died three years before the consulship of Q. Hortensius and Q. Metellus—*i.e.*, in B.C. 72.

torture ; it was not attested by any trustworthy person ; Strato had immediately been crucified, after having had his tongue cut out ; and Nicostratus was, for some reason unknown, not called as a witness by the prosecution. Cicero accordingly contends that the so-called deposition was utterly valueless, and that there was no proof whatever that his client had been in any way concerned in the death of Oppianicus.

Cluentius may, indeed, have been altogether innocent, but it seems impossible to accept as conclusive the arguments which his advocate here adduces in disproof of his guilt. Cicero represents the condemned man as living the life of an outlaw and a vagrant, abandoned by all his friends and shunned by every human being ; and argues that Cluentius, having nothing more to fear from him, would have been the last man in the world to wish to release him from his wretchedness. But it appears from other passages that Oppianicus was not altogether so badly off. He had indeed been banished from the capital, but he had a hired lodging just outside the city gates, to which he was riding on horseback when death overtook him ; and he also enjoyed the hospitality of Quinctius, his former counsel, at his country residence in the Falernian territory (175). Moreover we are told that his own as well as Sassia's friends, "*homines honesti atque omnibus rebus ornati*" (176), interested themselves in investigating the facts of his decease. Few again will be disposed to attach much weight to the argument derived from the supposed improbability that bread would have been chosen in preference to a liquid as the vehicle for administering the poison (173). There is more point in the statement that Asellius, whose agency Cluentius was said to have employed, was a personal friend of

Oppianicus, and probably therefore an enemy of his step-son, and that proceedings would surely have been instituted against him in the first instance if the prosecutor had been confident of the justice of his case. For the rest, the story of the death of Oppianicus as narrated by Cicero is unsupported by any corroborative evidence; and we may further note that, while seeking to disprove the genuineness of the alleged depositions of Strato and Nicostratus, he nowhere definitely states what those depositions were.

The two minor charges of poisoning preferred against Cluentius are briefly disposed of before the discussion of the circumstances which attended his step-father's death. The first is refuted on the evidence of the senator Plætorius, at whose house Vibius Capax, the alleged victim, was staying when he died; though it may be observed that Cicero incidentally admits that a member of his client's family had profited by the man's death (165). In reply to the second he is able to adduce the testimony of the father of the youth who was said to have met his death by accidentally swallowing a poisoned draught which Cluentius had prepared for the younger Oppianicus; and this is perhaps the only satisfactory piece of evidence in the whole speech.

II.

But the direct charges of poisoning preferred against Cluentius seem to have been of little moment compared with the obloquy he had incurred in connection with the trial before Junius. Cicero was perfectly well aware that prosecution and defence alike rested on the proof or disproof of bribery at that trial; and so, following the lead

of his opponent Accius (sec. 1), he devotes some five-sixths of his reply to an elaborate attempt to show the groundlessness of the prejudice from which his client so long had suffered. It is in this part of the speech that the interest for us mainly centres. Our comparative ignorance of the technical points of law which come up in the course of the discussion makes it all the more difficult for us to determine the question at issue; but there can be little doubt that if Cicero had been in a position to offer direct proof of his client's innocence he would have taken a wholly different line of argument. It is probably to the general conduct of the defence rather than to any particular misrepresentations that the boast about "throwing dust in the eyes of the jury" was meant to refer. The arrangement of the first part of the speech, for example, was evidently adopted from a shrewd calculation of the effect it must doubtless have had on the minds of the bench. The orator will not address himself to the proof of his client's innocence until he has first shown that Oppianicus had by his many enormities made himself liable to the severest penalties, and also that his guilt had been virtually decided by two previous verdicts recorded against those who were believed to have acted as his agents. With this view he first endeavours to predispose the jury to believe that Oppianicus had been guilty of attempting the life of Cluentius by detailing the catalogue of crime to which reference has already been made (*probabile ex vita*); and then he proceeds to narrate the circumstances which induced him to carry the plot into execution (*probabile ex causa*). As regards the first head, it is sufficient to observe that Cicero had every motive for devoting all his energies to blackening the character of his client's enemy (cp. sec. 10). It may

appear strange that Oppianicus had never been brought to trial for his numerous misdeeds, though some of them might possibly have admitted of extenuation on political grounds (24); but even making every allowance for exaggeration, there can be no doubt that he was a man of very bad character. More tangible matter for discussion is presented by the evidence which Cicero adduces under the second head. We saw that Oppianicus is credited with a twofold motive for having desired to get rid of his step-son—the opposition offered by the latter to his championship of the claims of the Martiales, and his own wish to secure for Sassia the reversion of her son's estate. Now the first of these seems rather a weak motive for a murder, and the second forces Cicero to assume that Oppianicus intended subsequently to get rid of Sassia herself (45), though there is no evidence whatever to show that Sassia ever suspected her husband of such a design; just as he afterwards hints that she on her part may have been the real cause of her husband's death (175). Again we may note the early stage at which the plot is said to have been discovered. Scamander, the freedman of Fabricius, meets by appointment Diogenes, who has been transferred to the service of Cluentius, and receives from him a poison, in return for which he is about to give him money when the witnesses (*virī boni*) emerge from concealment. But we are told in the same paragraph (47) that overtures had been made to Diogenes, while he was still the slave of Cleophrantus the physician, to administer the poison himself; and though Cicero now professes to acquiesce in the arguments which had been urged by P. Cannutius at the trial of Scamander, when he himself was counsel for the defence (52), it certainly does not appear why Diogenes should have

brought the drug to Scamander. Indeed, were it not for the difficulty occasioned by Cicero's change of front, it would be quite possible to maintain that the whole affair may have been got up by Cluentius himself. At any rate it is to be noted that while Scamander and Fabricius were unhesitatingly condemned the trial of Oppianicus resulted, as we shall find, in a conviction by the narrowest possible majority; and the argument from the *præiudicia* thus loses much of its force, as it is open to us to suppose either that Oppianicus was not really implicated in the guilt of the other two, or that the jury may have seen good grounds for mistrusting the wisdom of their previous decisions.

But it is in his discussion of the bribery scandal that Cicero is most evidently endeavouring to "throw dust in the eyes of the jury." His statement of the case is introduced by a sophism so obvious that the court can have had no difficulty in refuting it. He assumes (64) that as bribery had undoubtedly been practised at the trial before Junius, it must have been either by Cluentius or by Oppianicus; but the third supposition, that both were guilty, is rendered probable by internal evidence, and is in fact made almost a certainty by a passage in another speech where Cicero distinctly says that Staienus had taken a bribe from both prosecutor and defendant.² The ingenious narrative by which he endeavours to account for the fact that such disreputable jurors as Staienus, Bulbus, and Gutta were found among those who voted against Oppianicus is obviously open to suspicion. If Oppianicus was so notoriously guilty, and if his case had

² "Inventus est senator qui, quum iudex esset, in eodem iudicio et ab reo pecuniam acciperet quam iudicibus divideret, et ab accusatore ut reum damnaret."—In Verr. i. 13.

really been prejudged beyond all hope of acquittal at the two previous trials, how is it that he was convicted only by the narrowest majority possible? No one except Staienus got any money from him; those whom Staienus bribed by the promise of 40,000 sesterces (£400) apiece voted against the defendant when they found that the money was not forthcoming. How is it then that the verdict was not all but unanimous? That the issue turned upon a single vote is nowhere distinctly stated in the speech, but it would appear from the *Pro Cæcina*¹ that the numbers were seventeen against fifteen. Of the seventeen who voted against him, eight at least were suspected of being venal—Staienus, Bulbus, Gutta, Popilius, Falcula, Aquilius, Scævola, Egnatius; and though it is generally supposed that the other nine are identical with the persons who are eulogised as patterns of virtue in sec. 107, the context seems hardly to bear out the supposition (v. ad loc.). From the fact that five are said (76) to have voted not guilty, we may infer that the number of those who said *non liquet* was ten. It is noticeable that all these fifteen must have voted for the conviction of Scamander and of Fabricius; and we cannot think it likely that, if they were fully confident of the defendant's guilt, they would have allowed a suspicion that bribery had been practised against him to induce them to stultify their previous verdicts (76).

Again as to Staienus, many considerations might be urged to show the difficulty of accepting Cicero's version of his conduct at the trial. He is said to have received from Oppianicus the sum of 640,000 sesterces for distribution among sixteen of the jurors; and though his

¹ "Quum si uno minus damnarent condemnari reus non posset."
—Sec. 29.

vote was also necessary to secure a verdict of acquittal, on the supposition that no one would acquit Oppianicus without a bribe, there is no mention of what he himself was to get except a general allusion to the "hope of rewards still greater" (74). This sum never left his hands, and he is represented as scheming to keep it all to himself; but the event belied his hopes, for after the trial he was forced, according to Cicero, to disgorge the whole amount (*pecunia omnis*). Now it seems as difficult to believe that Staienus, who is credited in the text with a considerable degree of cunning (67), can have calculated on being able to embezzle all the money, as to accept the statement that the sum of 640,000 sesterces, neither more nor less, was extorted from him after the trial. A more satisfactory explanation of his adverse vote is to suppose that he had been paid a higher price by Cluentius. His absence from court when the jury were about to consider their verdict is also more readily understood on the supposition that he had an understanding with the prosecution. They were confident of a majority even without him; but Quinctius, acting in the interests of Oppianicus, and probably in ignorance of the counter-exertions of the other side, insisted on having him brought back before the trial went further.

The case of *Fidiculanus Falcula*¹ presents another difficulty. The suspicion that he had been bribed on behalf of Cluentius was aggravated by the informality of his election (*quod non suæ decuriæ munere neque ex lege sedisset*), and by the fact that he only heard part of the case (*—paucos dies ex subsortitione sedisset*, 103). He was brought to trial first on the ground of the informality, and again on the direct charge of having received a

¹ *Vide* on sec. 91.

bribe from Cluentius; and though Cicero had elsewhere (Pro Cæcina, 29) committed himself to an emphatic expression of belief in his guilt, there can be no doubt that his acquittal on both occasions is a great point in favour of the present defence. It does not appear whether Falcula was the only juror introduced into the consilium by the process of subsortitio; eos iudices in 113 may be no more than a rhetorical plural.¹ He seems certainly to have been the last elected; and as his election took place only a few days before the verdict was given, it is quite possible that it may have been arranged by the prosecution, acting in league with Junius, with the view of allowing Staienus to absent himself, and so avoid the awkwardness of condemning the man from whom he had taken a bribe. Though his acquittal is a standing difficulty in the way of any theory which presumes the guilt of Cluentius, the following version of the circumstances may perhaps be accepted as the nearest possible approximation to the real facts. Oppianicus gave Staienus money to secure sixteen of the jurors, whose votes along with that of Staienus himself would entitle him to a verdict. Cluentius and his friends saw that they must meet him with his own weapons, and as several of the bench were doubtless above bribery, they had to overbribe at least some of those who had already pledged themselves to Oppianicus—*e.g.*, Staienus, Bulbus, and Gutta. The subsortitio of Falcula secured them one vote which may have been doubtful before; and it was arranged, probably to divert suspicion as far as possible, that Staienus, whose vote was not any longer necessary to secure a majority, should stay away. This arrange-

¹ But cp. In Verr. i. 39: where the plural, *senatores*, is also used.

ment however was overturned by the energy and promptitude of Quinctius, in spite of the obstacles that would seem to have been placed in his way (*cum id ei per viatores consulto negligentius agi videretur*, 74). Without Staienus there would have been a majority of one; he votes, and the result is seventeen out of thirty-two in favour of a verdict of guilty. If the money which was afterwards recovered from Staienus was not, as Cicero says, the whole sum originally entrusted to him by Oppianicus, it may have been the purchase-money of the votes of those who, like Staienus, had subsequently accepted a higher bribe from Cluentius.

However this may be, it is almost certain that Cluentius was as guilty as Oppianicus. Indeed, it would appear from the result that he bought just as many votes as were necessary and no more. But if the conviction of Oppianicus was procured by bribery, what is to be said of the alleged attempt on the life of Cluentius? We have seen that Cicero's account of the discovery of the plot can hardly be considered a straightforward narrative of actual fact, and it would be quite possible to maintain the view that the whole thing had been got up by Cluentius and his friends. The motive of the former may have been the fear that Oppianicus might oust him from the succession to his mother's estate; and the argument which seems to have been employed by the other side to show that Staienus got the money from Oppianicus to patch up the quarrel (*ad conciliationem gratiæ*) may point to some genuine attempt on the part of Oppianicus to come to an arrangement with his son-in-law.

We have seen that Cicero's opinion of the merits of the case had undergone a complete change since he ap-

peared on behalf of Scamander, eight years before.¹ He defends himself from the charge of inconsistency (*ego vero, si quid eius modi dixi, neque cognitum commemoravi neque pro testimonio dixi, &c.*, 139), just as he endeavours to demolish the weight of the previous verdicts against his client by showing how entirely they had been due to the prevailing *invidia*. There can be little doubt that this change of attitude is partly due, as Mr. Nettleship has pointed out,² to the altered position of the equestrian order. From the tribunate of C. Gracchus to the period of Sulla's legislation the equites had enjoyed an almost uninterrupted monopoly of the coveted privilege of serving as jurors in the law-courts.³ Among the reactionary measures of Sulla was a law by which the *iudicia* were again transferred to the senate. But the senators were no more successful in their administration

¹ The following are the passages in which he had previously committed himself: 2 Verr. ii. 78, 79, where he instances the double treachery of Staienns to illustrate a similar piece of conduct on the part of Verres (cp. i. 39): 1 Verr. 38, 39, where, in citing cases of senatorial corruption, he alludes to the *litis aestimatio* at the trial of Scævola as a proof that bribery had been practised against Oppianicus: 2 Verr. i. 157, where he accuses Verres of having falsified the entries in his official register in order to conceal his connivance at the crime of Junius (*quod falsum codicem protuleris*). Further, in the Pro Cæcina, 28, 29, where he is endeavouring to depreciate the value of Falcula's evidence, he speaks in language very different from that of the Pro Cluentio of the grave informality of which Falcula had been guilty.

² *Journal of Philology*, No. 16.

³ The Lex Servilia of B.C. 106 (cp. sec. 140) proposed to associate the senate with the equites in the *iudicia*, but did not continue long in force; a similar motion was brought forward by the tribune Drusus in 90 (*vide* on sec. 153); and in 88 the Lex Plautia proposed that each of the thirty-five tribes should furnish fifteen persons of any standing whatever.

of justice than the equites had been before them; and the corruption practised at the trial before Junius in 74 furnished an excellent handle for the agitation in which the tribune Quinctius figured—an agitation which was still going on at the time of the impeachment of Verres, and which resulted in the Lex Aurelia, passed by way of compromise during the consulship of Pompey and Crassus in B.C. 70. After this date the jurors were selected in equal proportions from the senate, the equites, and the tribuni ærarii. It is probable that in 74 Cicero, as counsel for Scamander, would inveigh strongly against the senatorial conduct of the iudicia, as the venality of the jurors had just been illustrated in a manner so acceptable to those who were beginning to agitate for the restoration of the privileges of the equites. He had always had the interests of the equites at heart, and hence his protest even now against a proceeding which would render them liable to the conspiracy clause in the sixth chapter of the Lex Cornelia de Sicariis, which was technically applicable to senators alone. But there is a passage in his defence of Cluentius where he sets the senatorial administration in a fairer light,¹ evidently because he was conscious that it was his interest to uphold the character of a tribunal which had given a verdict favourable to his client in the previous case of Scamander.

¹ “Tum vero illa iudicia senatoria non falsa invidia, sed vera atque insigni turpitudine notata atque operata dedecore et infamia, defensionis locum nullum reliquissent.”—Sec. 61.

III.

A recent writer ¹ has attempted to show that no charge was made against Cluentius under the sixth chapter of the Cornelian Law; and that it is in the elaborate refutation of the existing prejudice that Cicero is endeavouring to "throw dust in the eyes of the jury," by defending his client from an accusation which had not been made against him in order that he may afterwards gain the sympathies of the court by refusing to take advantage of the technical defence of which he could easily have availed himself. Conscious that Cluentius, as a Roman eques, cannot be found guilty of corruption under a clause which applies only to senators and to the high officers of state, but by no means confident of his innocence in point of fact, he first endeavours to show that he could not possibly have had any motive for conduct such as would have rendered him liable to the provisions of the clause in question, and then generously disclaims the technical plea by which he might have declined to say a single word about the circumstances which led to the conviction of Oppianicus. The division of the case adopted in the opening paragraph, and carefully observed throughout the speech, is cited as one of the main proofs of the correctness of this theory. The prejudice arising out of the bribery scandal (*invidia*) is kept distinct from the charges directly alleged against Cluentius (*crimina*); and Cicero says (*sec. 3*) that though he is able to disprove the latter he must in dealing with the former throw himself to some extent on the protection of the

¹ Dr. Carl Bardt, in the Programme of the Gymnasium of Neuwied, Ostern, 1878.

court. It is further observed that in the transition to the second part of the speech, where, on the assumption that the deception has now done its work, the orator is disclaiming the technical defence which he wished the jury to believe he might have employed, he expressly states that the question of bribery at the trial of Oppianicus is not before the court (*vide* secs. 160 and 164). Lastly, it is urged that it is impossible to believe that the prosecution would have brought a charge under a statute which they knew did not apply.

This theory would undoubtedly, if correct, give additional point to the boast reported by Quintilian; but many arguments may be adduced in disproof of it. In the first place, it seems extremely improbable that Cicero could have ventured thus to presume on a Roman jury's ignorance of the real nature of the issue they had to try. Surely no amount of subtle misrepresentation could have misled them to such an extent as to make them give a pleader credit for refusing to avail himself of a technical defence which could have sheltered his client from a charge never alleged against him. If there are several incidental indications which seem to support the theory under discussion,¹ there are at least as many on the other side. *Hac lege ipsa* (116) can only refer to the sixth chapter of the Cornelian Law; nor does it seem natural to suppose that in another passage¹ Cicero is using the

¹ Bardt contrasts especially the general expressions used to introduce the charge of bribery (*e.g.*, *Corruptis dicitur*, sec. 9; *dicitis*, sec. 39; *at enim*, sec. 88; *est hæc opinio*, sec. 90; *dicitur*, sec. 138) with the more definite *dicis* or *dixisti* usually employed in references to the charges of poisoning directly preferred by the accuser. He also refers to the fact that the word *absolvere* is avoided throughout, though it is employed in speaking of cases analogous to the present (*e.g.*, 158).

word *lex* ambiguously, with the view of inducing the jury to believe that Cluentius was impeached under the sixth chapter, while his words only commit him to the *Lex Cornelia* in general. Further, he expressly says that his client has been charged under a statute (*viz.*, the sixth chapter of the law) which applies only to senators and those who have held office;² and with regard to such passages as those above referred to (*e.g.*, 164), where he tells the court that the question of bribery is not before them, it seems more natural to suppose that he is speaking as one who is availing himself of the plea which he had previously disclaimed, than that he now for the first time ventures to state definitely what he has previously endeavoured only to insinuate, *viz.*, that Cluentius was impeached only under that section of the Cornelian Law which related to poisoning, and to which all alike were amenable.

The real truth seems to be that Cluentius was impeached under both sections of the Cornelian Law, and that though the impeachment nominally rested on the direct charges of poisoning, the real strength of the prosecution lay in the prevailing belief that he had by corrupt means procured the conviction of his step-father eight years before. His accusers were doubtless aware that technically he could not be convicted under the sixth chapter, and hence the argument of Accius that in equity the same law should in existing circumstances be held binding on both orders.

¹ " Illi non hoc recusabant, ne ea lege accusarentur, qua nunc *Habitus* accusatur, quæ tunc erat *Sempronia*, nunc est *Cornelia*; intellegebant enim ea lege equestrem ordinem non teneri " (154).

² " A. Cluentius causam dicit eques Romanus ea lege, qua senatores et ei qui magistratum habuerunt soli tenentur " (156).

The view of Zumpt, that Cluentius was really liable under the sixth chapter, cannot be maintained. Relying on a comparison of the Pandects (Dig., 48. 8), he supposes that in addition to the chapters quoted by Cicero (148) as binding senators, official and unofficial (*qui magistratum habuerint quive in senatu sententiam dixerint*), there was another clause (misquoted by Cicero at sec. 157) which was applicable to all who by false witness should compass the ruin of an innocent man. It may indeed seem strange that Sulla should have made no provision for bringing to justice those who, like Cluentius, were charged with corrupting members of his senatorial juries. But the passages in Cicero (148 and 157) are quite explicit. He protests against extending to the community at large a statute which was directed against the senatorial jurors of Sulla's *régime*, and works on the fears of the mixed tribunal he was addressing by pointing out the danger of establishing such a precedent. The whole point of Sulla's law, by which everything that came under the head of what may be called "judicial circumvention" was to be punished as murder, was that it applied to those who should violate its provisions when acting in a judicial capacity. Even had the trial of Oppianicus been held after the passing of the Aurelian Law, and even had Cluentius sat on the bench as a juror and been guilty of bribery, he would still have been technically exempt from the provisions of the Cornelian Law; much more when he was only accused of having bribed a jury—an offence which, so far as we know, could under Sulla's laws be prosecuted only when the criminal was a senator or high officer of state.

The reference in Quintilian already quoted (ii. 17. 21)

makes it probable that Cluentius was acquitted. The question of his guilt or innocence of the several charges preferred against him is, as we have seen, one which cannot now be determined with any degree of certainty. Sufficient reason has been shown, from considerations internal to the case, why Cicero's account cannot be implicitly accepted; and he himself has warned his readers against looking on his judicial orations generally as unbiassed and impartial records.¹ We may allow the charge of having set his client's case in too fair a light to rest upon him without much fear that it will seriously injure his moral character, which was considerably higher than that of his contemporaries. The exigencies of an advocate's position have always been proverbial, and the question how far his obligation to his client should be permitted to obscure the finer shades of truth and falsehood is still a fruitful subject of debate.

¹ "Sed errat vehementer si quis in orationibus nostris, quas in iudiciis habuimus, auctoritates nostras consignatas se habere arbitratur: omnes enim illæ causarum ac temporum sunt, non hominum ipsorum aut patronorum" (Pro Cluent., 139). Compare: "patroni est non numquam veri simile, etiam si minus sit verum, defendere." —De Off., ii. 14. 51.

*THE SPEECH OF CICERO FOR
CLUENTIUS.*

THE SPEECH OF CICERO FOR CLUENTIUS.

GENTLEMEN OF THE JURY,—I noticed that the speech of I.
the counsel for the prosecution was wholly divided into
two parts, one of which, as it seemed to me, was made to
depend for its main support on the now deeply-rooted
prejudice¹ against the trial before Junius, while the other
touched with reluctance and distrust, and as a mere
matter of form, on the question of the charges of poison-
ing, for the trial of which this court of inquiry has been
by law established. I have accordingly determined, in
speaking for the defence, to maintain the same division,
and to keep the prejudice referred to distinct from the
direct charges against my client; as I should like all to
know that I was as little desirous of evading in silence
as of glossing over by talk² any point connected with the
case. But when I consider how I must direct my efforts 2.
on either head, it seems to me that the one part—that
namely which properly belongs to your court and to a

¹ “Prejudice” will perhaps best render *invidia* in every context; here prejudice ‘on the subject of’ the trial. *Iudicium* is either ‘trial,’ ‘bench of jurors,’ or ‘verdict,’ according to the context.

² *Obscurare aliquid dicendo* = to throw a cloud of words over a subject.

tribunal by law appointed to deal with cases of poisoning—will be very short indeed and will not require any great exertions of oratory; whereas the treatment of the other, which is quite foreign to a judicial inquiry and is more suited to the heated atmosphere of popular assemblies inflamed by seditious arts than to the calmness and moderation of a law-court, will obviously involve much difficulty and trouble. In this perplexity however there is one consideration, gentlemen, from which I take comfort. In listening to accusations directly preferred it is your habit to look to the pleader for their complete refutation, believing that you should do nothing more for the deliverance of the accused than his advocate can show grounds for by clearing him of what is laid to his charge, and generally by making good his defence. But this is not how you must deal with the prevailing prejudice; there you are bound, in determining the question among yourselves,¹ to consider what should be said rather than what is actually said by me. For while by the charges brought against Aulus Cluentius it is his own personal status that is endangered, the prejudice involves the interests of all alike. Accordingly in pleading the one division of the case I shall employ the language of proof, in the other that of entreaty: in the former I must secure your careful attention, in the latter I must beseech your protection.² Without your assistance and that of your

¹ Reading *inter vos* with Classen: *inter nos* (Baiter) would mean "in adjudicating between us," *i.e.*, between the accuser and me. The context seems to show that *nobis* refers to Cicero alone; and, moreover, the phrase "*consurgitur in consilium*" (sec. 75) makes it certain that the jury had an opportunity of discussing their verdict.

² *Fides* here not 'sense of honour,' 'feeling of duty;' but 'protection' (cp. '*vestri auxilii*' below). Cp. ii. Verr. i. 9. 25, "*deum atque hominum fidem implorabis*," and the colloquial "*di vostram*

honourable court¹ no man can possibly withstand the force of prejudice. For myself, I am at a loss where to look. Shall I deny the fact of the bribery scandal? Shall I deny that it has been a matter of agitation in public meetings, of conversation in the law-courts, of serious mention in the senate?² Shall I seek to wrest from men's minds a prejudice so strong, so deeply engrained, of such long standing? That were beyond my ability. It is for your protecting powers, gentlemen, to come to the rescue of my guiltless client in this disastrous scandal, as though it were some destructive fire that might involve all alike in general conflagration.

For just as elsewhere truth has too slender a basis to rest on and too little strength to support it, so here odium which is groundless ought to be of no avail. Let it reign supreme in public meetings, but hang its head in courts of law; let it prevail in the prejudices and pratings of the ignorant, but be spurned by the understandings of intelligent men; let its outbreaks be sudden and violent, but when time has intervened and the merits of the case have become known let it lose all its force. In a word, let us retain the definition of judicial equity handed down to us by our forefathers, which declares that in law-courts crime is punished apart from prejudice and prejudice apart from crime is laid at rest.

fidem : " *fides publica* is the equivalent to our 'passport.' The word denotes in this connection the "protection" which a sense of honour will prompt men in certain circumstances to accord.

¹ Baiter and Kayser, following Garatoni, bracket the words *ac sine*, but there is no MS. authority for their reading. *Tales viri* is a complimentary expression (*hi tales viri*, 186), and *ac* here is 'even,' or 'that is to say.'

² Cp. de Orat., i. 31 : "populi motus, iudicum religiones, senatus gravitatem unius oratione converti."—H. N.

6. For this reason, gentlemen, before proceeding to speak to the facts of the case I have certain requests to make of you. In the first place I must ask you, as is only reasonable, not to bring any preconceived notions into this court; for we shall forfeit not only the authority but even the very name of jurors if, instead of giving judgment here in accordance with the merits of each case, we bring down from our homes on every occasion judgments already formed. Secondly, if you find that reason uproots, that words weaken, or else that truth wrests from you¹ any opinion you may have already embraced, I beg that you will not resist but will dismiss it from your minds with willingness or at least with resignation. Next, when I am speaking in disproof of each several charge, do not on your part call up before your minds in silent thought considerations which may run counter to what I say, but wait for the end and allow me to observe my own order of treatment. When I have finished, then and not till then mentally note any real omission I may have made.²

- III. 7 I know full well, gentlemen, that I am taking in hand a case which has been now for eight successive years completely misrepresented, and which the silent consent of society has, I may say, disposed of by an adverse vote. But if some Providence will only gain for me an in-

¹ Ramsay well explains the significance of *convellet*—*labefactabit*—*extorquebit*: but Mr. Nettleship notes that the first two are used as nearly synonymous in *Pro Rab. Perd.* 3 (“*quum cuncta auxilia reipublice labefactari convellique videat*”), and *cp. Ad Fam. v. 13. 2.*

² Baiter and Kayser bracket *animo* before *requiratis*: but there is no lack of MS. authority for the word. The orator is asking his audience not to make imaginary corrections as he went along, but, when they came to consider their verdict, to note the absence of (*requirere*) anything he might actually have omitted.

dulgent hearing at your hands, I am sure I shall make you understand that nothing is so much to be dreaded as popular prejudice, and that when a guiltless person person has incurred such prejudice he should wish for nothing so much as a fair trial, because here at last and here alone can he find an end and issue of unfounded obloquy. I am full of confident hope that if I succeed in setting forth the points in the case and in overtaking the whole subject in my argument, this very court wherein you sit assembled, instead of being, as his accusers thought it would be, full of fear and terror for A. Cluentius, will prove at last the harbour and refuge of the tempest-tost bark of his pitiable fortunes. And although there is much that I think should be said, before speaking to the facts of the case, concerning the dangers to which we all are liable from popular prejudice, still, as I am unwilling to keep you longer in the uncertainty of expectation by any words of mine, I shall proceed to the charge; only begging you, gentlemen, as I know I shall have to do more than once, to listen to me just as if my case were being argued now for the first time, as in fact it is, not as if it had often been argued before and never successfully. For to-day we have for the first time accorded to us an opportunity of disposing of the charge on its merits;⁸ up till now misrepresentation and prejudice have been the main elements in the case. While therefore I briefly but distinctly reply to the indictment of many years, I request you, gentlemen, to continue to favour me with a courteous and attentive hearing.

⁸ B. and K. bracket *veteris* and follow S.T. in reading *ipsius* for *istius*, and a point is thus gained by the contrast between the "actual issue" and the existing prejudice.

IV. 9. A. Cluentius stands charged with having bribed a court of justice in order to procure the conviction of his enemy Staius Albius, an innocent man. I shall show, gentlemen, in the first place—since this charge of compassing the ruin of an innocent man by bribery has been the mainspring of the relentless hostility and prejudice of which I have spoken—that no one was ever brought to trial on more heinous charges supported by a greater weight of evidence. Secondly, I shall show that the very jurors who found him guilty had passed previous judgments compromising him in such a way as altogether to preclude the possibility of his being acquitted, I do not say by themselves, but even by any other bench of jurymen. This done, I shall next go on to prove the point which I am aware is above all demanded of me, namely that the tribunal was tampered with, not on the side of ¹ Cluentius, but against Cluentius; and I shall enable you to discriminate throughout between the actual facts of the case, ² the embellishments of error, and the fabrications of prejudice.

10. First in order, then, let me take the fact that Cluentius entered the lists as prosecutor relying on the most definite charges and the most irrefragable evidence—a fact from which it may be seen that he had good ground for feeling confident of his case. At this point I deem it necessary, gentlemen, briefly to set before you the charges on which Albius was condemned, and I ask

¹ So Mr. Nettleship would render *a Cluentio*, comparing Lucret. i. 693, “*nam contra sensus ab sensibus ipse repugnat*,” with Munro’s note. A similar use of the preposition occurs in sec. 93 ad fin., “*non modo dicendi ab reo*,” &c.

² Cp. Ad Fam. i. 7. 6, “*quid res, quid causa, quid tempus ferat tu optime perspicies*,” “*what is involved in :*” thus here “*what lawfully belongs to the case as it really is*” (*ipsa*).—H. N.

you, Oppianicus, to believe that it is against my will that I refer to your father's trial: honour and my duty to the defendant compel me to it. If I am not able to content you on the present occasion, I shall have many opportunities of doing so in the future; but as for Cluentius, if I fail to satisfy him now, I shall never have the chance again. And surely there is no one who would hesitate to speak against a condemned man now in his grave on behalf of one unattainted and still alive. In the one case the sentence of guilty has already put him against whom such language is directed beyond all peril of ignominy, while death has removed even the possibility of grief: but he on whose behalf we so speak cannot contract any discredit without feelings of bitterest vexation, and without the gravest personal dishonour and disgrace. And to let you see that Cluentius was not actuated by litigious zeal or by any vainglorious desire for display¹ in impeaching Oppianicus, but by abominable wrongs, by daily plottings, by having the fear of death before his eyes, I shall go a little further back in my proof; and I entreat you, gentlemen, not to take this amiss, for a knowledge of the beginning will enable you much more readily to understand the end.

11.

There was one A. Cluentius Habitus, gentlemen, the father of my client here, who for moral worth, high character, and noble birth, was by far the most distinguished man not only in the township of Larinum to which he belonged but also in the surrounding district and neighbourhood. He died in the consulship of Sulla and Pompeius, leaving behind him the defendant, a boy of fifteen, as well as a grown-up daughter of marriageable

V.

B.C. 88.

¹ "Non ostentatione aliqua aut gloria adductum." Cp. Rab. Post. 38, "quod genus tandem est illud ostentationis et gloriæ."—H. N.

- age, who within a short time of her father's death was wedded to her first cousin, A. Aurius Melinus. This youth was then considered pre-eminent among his fellows for nobility and integrity of character; and the union
12. subsisted in all esteem and harmony, till suddenly there sprang up on the part of an unnatural¹ woman an abominable passion, involving not only dishonour but even crime. SASSIA, the mother of Habitus here—for mother she will be called by me throughout the case,² though she harbours against him the hatred and cruelty of an enemy; she will be called, I repeat, by the name of mother, nor will she ever forfeit in the narrative of³ her unnatural wickedness the title which nature has given her. For in proportion as that title is in itself full of love and tenderness the greater will be the repulsion with which you will view the unparalleled guilt of a mother who has been now for many years, and is at this time more than ever,⁴ desiring the death of her son. Well then, this mother of Habitus, having conceived an un-

¹ *Importunus*—common in Cicero both of things and persons: Fin. i. 35; Verr. i. 8; N.D. iii. 81. *Coniunctus* w. abl. De Orat. i. 17, 243; Fam. v. 13; Phil. iii. 35; Verg. *Æn.* x. 65.—H. N.

² Reading in *omni causa*, which is repeated in *neque unquam*, &c. Many MSS. have *nominis causa*, a reading which is not without point if we consider Cicero to mean that he will always employ, “for the sake of the word,” the title ‘mother,’ in order that his hearers may contrast with a mother’s love the unnatural conduct of this woman, and brand it with the censure it deserves (“quo enim . . . maiore odio dignum esse ducetis”). It is more probable that *in omni* was changed to *nominis* than *vice versâ*; and the motive of the change may have been that *tota* would be more regular.

³ *Audiet*: cp. “bene, male audire:” lit. “nor will she so be blamed for . . . as,” &c.

⁴ *Cum maxime*—“at this particular time:” cp. De Off. ii. 7, 23; Tac. Ann. iv. 27.

lawful passion for her young son-in-law Melinus, at first, though not indeed for long, kept her desires in check as best she could; but afterwards began to burn with such frenzied lust, and to be carried away by¹ the fires of her evil passion in such wise that no regard for modesty² or natural affection, for the disgrace of her family or the talk of society, for the indignation of her son or the sorrow of her daughter, could call her away from her desires. The young man, whose mind was not yet fortified with wisdom and understanding, she worked upon by all the arts with which it is possible to ensnare and captivate those of his years. Her daughter, who not only felt the anguish and indignation which every woman would feel at such affronting conduct on the part of a husband, but further could not tolerate the monstrosity of her mother being her husband's mistress, of which she thought she could not even complain without impiety, while anxious that everybody else should remain in ignorance of her foul wrong, pined away sorrowing and weeping in the arms and embrace of this most loving brother. But suddenly there comes a divorce, which seemed as if it would heal all her troubles: Cluentia separates from Melinus, sorry to leave her husband but glad to see the end of her wrongs. Thereupon that exemplary and illustrious mother began openly to exult for joy, to triumph and rejoice: she had conquered her

13.

14.

¹ Wesenberg says that Cicero always writes *efferrī latitia*, but *ferri libidine*, &c.; Pro Quinct. 38, "qui usque adeo fervet ferturque avaritia; Cluent. 199, "ferri crudelitate et scelere: cp. Anct. Bell. Alex. 20, "cupiditate pugnandi (ferebatur);" Verg. *Æn.* ix. 354, "nimia cæde atque cupidine ferri."—H. N.

² B. and K. omit *non pudicitia* after *non pudor*, as not found in S. T. Classen however retained the words. *Pudor* is the 'feeling of modesty; ' *pudicitia* the 'condition of personal chastity.'

daughter, but not her lust.¹ Unwilling that dark suspicions should any longer sully her fair fame, she bids ~~them deck and lay out for her, in the selfsame house from which her daughter had been driven and thrust forth, the very nuptial couch which two years before she had herself bedecked for that daughter's marriage.~~ The mother-in-law weds the son-in-law, with no auspicious rites,² with no one to sanction the act, amid universal forebodings of ill.

VI. 15. ➔ What incredible wickedness was there in this woman, wickedness with this one exception unique in all experience!³ What unbridled and ungovernable lust! What unparalleled shamelessness! Is it possible that she stood in no awe, if not of the vengeance of God and the talk of men, at least of the nuptial night and the bridal torches? Did she not dread the threshold of the bed-chamber,⁴ nor her daughter's couch, nor even the very walls which had witnessed the formal nuptials? Nay, in her frenzied passion she broke through and bore down every barrier; modesty was vanquished by lust, fear by

¹ B. and K. omit *non libidinis*, and connect *victrix filia* with *noluit* in the next sentence.

² *Nullis auspiciibus*, lit. "no soothsayers." To the passages quoted by Ramsay from Cicero and Plautus, Mr. Nettleship adds Varro ap. Serv. ad. *Æn.* iv. 166: "Varro pronubam dicit quæ ante nupsit . . . ideoque *auspices* deliguntur ad nuptias."

³ *In omni vita*: Tibullus ii. 1, 37, "his *vita* magistra Desuevit quæna pellere glande famem;" Verg. *Æn.* vi. 663, "Inventas aut qui *vitam* excoluere per artes:" Mart. viii. 3, 20, "agnoscat mores *vita* legatque suos" = human life generally.—H. N.

⁴ The references are to the customs connected with the ceremony of marriage at Rome. The bride was escorted to her new home by a procession with lighted torches; and on her arrival there was lifted across the threshold—a usage which must have originated in the wish to avoid the possibility of any ominous stumble.

shamelessness, and prudencé by frenzy. This disgrace, affecting as it did his family, his kindred, and his name and fame, the son took sorely to heart, and his vexation was aggravated by his sister's daily complaints and ceaseless weeping. But even in the face of such outrageous and criminal conduct on the part of his mother he made up his mind to do nothing more than merely refrain from all intercourse with her, lest by keeping up the connection he might be thought not only to view with complacency but even deliberately to approve of what¹ he could really not look on without the most intense anguish of mind.

So much for the circumstances in which the enmity between the defendant and his mother had its origin: when you come to be familiar with the sequel, you will see how pertinent to the case these circumstances were. It does not escape me, indeed, that at the trial of a son one should be slow to speak of a mother's infamy, no matter how depraved that mother may be. I should be unfit, gentlemen, to undertake any case if I, who am retained for the defence of those imperilled by actions at law, failed to see what is fixed and implanted in the feelings common to humanity² and in the natural constitution of man. I am well aware that men should keep silence concerning outrageous conduct on the part of parents—aye, and should even endure it with resignation; but I am also of opinion that we should endure only where possible, and only where possible hold our peace. Now Al Cluentius has never in all his days seen any adversity, has

¹ Reading *ne quæ* for *ne quam*, with Garatoni and Baiter.

² *Communibus hominum sensibus*: De Orat. iii. 195, "ea sunt in communibus infixæ sensibus." Vide Munro on Lucr. i. 422.—H. N.

never been put in peril of his life, has never feared any form of ill, except what was stirred up and set on foot¹ entirely by his mother. Yet on this occasion he would say nothing at all about his wrongs, allowing the veil of reticence, if not of oblivion, to cover them, did not the issues of this case² make it quite impossible for him to be altogether silent with regard to them. For this very trial, this action, and all the abundant evidence that is to be produced, was originally got ready by his mother, and by his mother is at this moment being organised and equipped to the full extent of her wealth and resources. To crown all, she has lately in person swooped down on Rome from Larinum to secure the ruin of her son. She is at hand—this shameless, wealthy, and bloodthirsty woman. She directs the prosecution and marshals the evidence. She exults in this man's unkempt appearance, and in the garb of mourning which he wears. She longs for his overthrow, eager to shed every drop of her blood if only she can see his shed first. If you do not in the course of the trial plainly perceive all this, believe that I am wantonly attacking her; but if her enormities are clearly proved, you will have to pardon Cluentius for allowing me to speak as I am doing, as you would have to refuse to pardon me if I were to hold my peace.

VII. 19

I shall now proceed briefly to set forth the charges on which Oppianicus was condemned, that you may understand the resolute character of A. Cluentius as well as the motive of the prosecution. And first I shall point out the ground of the accusation, to let you see that it was stern necessity that compelled A. Cluentius to act as he did. When he had plainly detected the poison which

20

¹ Reading *conflatum et profectum*.

² Reading *sed vero sic agitur ut.*

Oppianicus his mother's husband had prepared for him, and the matter was not one of surmise but of plain and palpable proof, when in fact there could not be the shadow of a doubt as to the justice of his case, he impeached Oppianicus. Of his resolution and energy I shall afterwards speak; all I wish you to know at present is that the only motive my client had for the impeachment was the wish to escape in this way, the only way open to him, the danger with which his life was threatened and the daily plottings against his personal safety. And to show you that the charges on which Oppianicus was impeached were such as to give the accused as little ground for hope as his accuser had for fear, I shall set before you a few of the counts in the indictment on the occasion of the trial. When you hear them no one among you will wonder that the defendant mistrusted his prospects¹ and had recourse to Staienus and bribery.

A certain lady of Larinum called Dinæa, the mother-in-law of Oppianicus, had three sons, M. Aurius, N. Aurius, and Cn. Magius, and a daughter, Magia, married to Oppianicus. M. Aurius, when quite a young man, was taken prisoner at Asculum² in the Social War, and fell into the hands of the senator Q. Sergius (the same who was found guilty of assassination), by whom he was confined in a slave's prison. M. Aurius on the other hand died, leaving his brother Cn. Magius his heir; afterwards Magia died, the wife of Oppianicus; and last

21.

¹ *Rebus*, 'position,' 'situation.' Cæs., B. G. ii. 24, "desperatis nostris rebus domum contenderunt." Livy, v. 11; 36. 31, "trepidum rerum suarum."—H. N.

² *Asculum*, a strongly fortified town in the Picentine territory, was captured in B.C. 89 by Q. Pompeius Strabo, the father of Pompeius Magnus.

of all Cn. Magius, the only remaining son of Dinæa, died also. He left his property to young Oppianicus there, with orders to share with his mother Dinæa. Meanwhile information reached Dinæa from a known and not untrustworthy source that her son M. Aurius was still alive, a slave in the Gallic country.¹ The bereaved mother, now that the hope of recovering one child was held out to her, called together all her kinsfolk and those who were his intimate friends, and besought them with tears to undertake the charge, trace the young man, and restore to her the son whom fate had been kind enough, little though it was,² to leave the sole survivor of a numerous family. No sooner however had she begun to take the matter up than she was surprised by illness; and so she made her will, leaving a legacy of four hundred thousand sesterces to her absent son, and in turn appointing as her heir the plaintiff Oppianicus, her grandson. A few days afterwards³ she died. Nevertheless her kinsmen, in pursuance of the arrangement that had been made while she was still alive, set out after her death for the Gallic country in search of M. Aurius, taking the person who had

About
£4000.

¹ *Ager Gallicus* was the name given to a tract of land lying along the Adriatic between Ariminum and Ancona, in which the Senonian Gauls settled after crossing the Alps. Varro, *De Re Rust.* i. 2, defines it thus: "Ager Gallicus Romanus vocatur qui viritim cis Ariminum datus est ultra agrum Picentium."

² *Tamen* is to be taken closely with *unum*, "a poor remnant."

³ B. and K. have *cis diebus paucis*, "a few days after that;" *his* would be "a few days after this." In sec. 40 Cicero says that Oppianicus poisoned Dinæa, and also altered her will in favour of his son. It is possible that in this first passage he means to hint at the villany which he afterwards details; for the words *cuiusmodi ut* (cp. 135) seem to imply that the will was an unnatural one, and must have been due to foul play.

brought the news along with them. Meanwhile Oppianicus, VIII. 23. being as you will learn in many ways a man of matchless wickedness and impudence, first bribed the informant by the agency of a Gallic friend of his own,¹ and then procured at no great expense the removal by assassination of M. Aurius himself. / On this those who had gone to trace and recover their kinsman despatched a letter to the Aurius at Larinum, their own as well as the young man's relatives, saying that they found it difficult to conduct the search because the informant had to their knowledge been bribed by Oppianicus. This letter A. Aurius,² a brave and energetic man, of high local standing, and a very near relative of the missing M. Aurius, reads publicly to a large audience in the forum, Oppianicus being present; and loudly proclaims his intention of impeaching the latter if he found that M. Aurius had been murdered. / Meanwhile those who had gone to the Gallic country return 24. shortly afterwards to Larinum with the report that M. Aurius had been put to death. / The inhabitants to a man, not his relatives alone, are roused to feelings of hatred for Oppianicus and of pity for the unfortunate youth. / So when the same Aurius who had previously given notice of his intention to prosecute began to press the fellow with loud threatenings, he fled in haste from

¹ *Galicanus* may possibly be a proper name. It is generally taken to denote a person "connected with Gaul," as the same adjective is elsewhere applied to the legions quartered there. But is it not more natural to refer it to the *ager Gallicus* spoken of above, "by the agency of a dweller in the Gallic country"?

² If this Aurius is the same as the Aurius referred to in such disparaging terms in sec. 11 it is curious to note how Cicero varies his description of him. But "alterum Aurius" below probably refers to the Aurius of sec. 11, and this is a different person altogether.

25. Larinum and betook himself to the camp of the illustrious Q. Metellus;¹ and after his flight, which bore witness to a guilty conscience, he never dared to trust himself among his enemies unarmed. In² the reign of terror which accompanied the triumph of Sulla he swooped down on Larinum with a band of armed men, to the utmost consternation of the populace. There he made away with the four chief magistrates³ elected by the townsmen, declaring that Sulla had appointed him with three others, and had likewise instructed him to procure the outlawry and death of the A. Aurius who had threatened to impeach him on a capital charge, of the other A. Aurius, together with his son Lucius, and of Sex. Vibius, whose agency he was reported to have employed in bribing the man who had brought the information to Dinæa. They were accordingly executed in most ruthless fashion, and this kept the rest of the citizens in no small terror of proscription and death. The facts were brought to light on the occasion of his trial; and how then can any one imagine that he could possibly have been acquitted? But all this is of small account. Hear what 5 IX is still to come, and you will wonder, not that Oppianicus was at last found guilty, but that he was for any length of time allowed to go free.

¹ Q. Metellus Pius had left Africa to join Sulla in Italy on his return from the East (B.C. 83), and helped him to victory.

² For this use of *per* Mr. Nettleship compares De Div. ii. 27, "per somnum," and Fam. xvi. 8. 1, "per hiemem," "during the time of."

³ The chief magistrates in country towns were called either *duumviri* or *quattuorviri*—*iuri dicundo*, as would appear from inscriptions. The former are said to have been at first *propreto* colonies, the latter to *municipia*. "III. viri A. P." in inscriptions means *quattuorviri ædilitia potestate*.

Notice, to begin with, the shameless impudence of the man. He set his heart on taking to wife Sassia, the mother of Habitus—the very woman whose husband, A. Aurius, he had murdered. It were hard to say if the brazenness of his suit could be matched by her unnatural conduct in the event of her compliance. But just observe the good feeling and the resolution each displayed. Oppianicus asks Sassia to marry him, and earnestly solicits her hand. She on her part shows no surprise at his audacity, no loathing for his shamelessness—nay, she does not shrink from his dwelling all streaming with her husband's blood: her reply was that she felt averse to the marriage "because he had three sons." Having set his heart on Sassia's money, Oppianicus thought that he would have to procure from his own home a means of removing the obstacle which stood in the way of his nuptials. Now he had an infant son by Novia, and the second² was being brought up beside his mother, Papia, at Teanum, a town eighteen miles distant from Larinum. Without assigning any reason, he suddenly sends for the boy from Teanum, a thing he had not formerly been wont to do except for the games or other holidays; and his poor mother lets him go without a thought of harm. Oppianicus then pretended that he was off to Tarentum; and on that selfsame day the boy, after being seen in the streets in good health at five o'clock, died before night-fall, and was buried next morning before the dawn had time to break. This great sorrow the voice of rumour communicated to the mother before any member of the household of Oppianicus; and she, on hearing in one breath that she had been robbed not only of her boy but

26.

27.

28.

² There was a third by Magia, Oppianicus the younger, the prosecutor in the present action.

even of the privilege of paying the last honours to his remains, came right off to Larinum more dead than alive, and there performed over again the obsequies of her already buried child. Before ten days had passed the other boy, the infant, is put to death; ¹ whereupon Sasia forthwith marries Oppianicus, whose heart was now full of joy at the happy fulfilment of his expectations. Nor can one wonder at her, since she saw that by way of marriage gifts children had been murdered to win her favour. As a general rule, men desire riches for their children's sake, but it was this man's pleasure for the sake of riches to cast away his children.

o x 29. ² Gentlemen, I perceive that you, as men of feeling, are greatly discomposed by the brief recital of such monstrous crimes. But what, I ask, do you imagine must have been the sensations of those who had not only to listen to the narrative but also to bring in a verdict? You are hearing the story of one on whom you are not sitting in judgment, of one whom your eyes do not behold, of one who is now beyond the reach of your detestation, of one who has paid his debt to nature and to the law—whom the law punished with exile and nature with death; and

¹ For this inverted construction see Roby, 1733. Another example occurs in sec. 72.

² The difficulty of this passage seems not to have been sufficiently noticed by editors, who take *laetanti animo* as ablative and refer the clause to Sasia. In this they are undoubtedly supported by the arrangement of the words; but there is much awkwardness in the construction *animo spe confirmato*, and a better sense is obtained by supposing that it is Oppianicus who rejoices that he has now secured the woman and her money (27.) Nothing has been said of any hopes entertained by Sasia. *Laetanti* and *confirmato* are therefore both taken as datives in construction with *Oppianico*. For the ablative cp. Ad Qu. Fr. i. 1, 1, "tremere animo."

you are hearing it from the lips of one who is not his personal enemy, who is not producing witnesses, and who is treating briefly and cursorily what might be stated at the greatest length. They heard the story of one concerning whom they were bound to bring in a verdict on oath, who was in court, and whose execrable crime-stained face they had to look on, whom they all detested for his brazenness, whom they thought deserving of the severest punishment; and they heard it from the lips of his accusers, they heard the depositions of many witnesses, they heard the long and telling speech of the eloquent P. Cannutius, in which each individual point was dealt with in detail. Is it possible for any one in possession of the facts to harbour a suspicion that Oppianicus was an innocent man whose ruin was treacherously compassed by a judicial process? 30.

I shall now summarily dispose of the remaining charges, gentlemen, that I may come to what more nearly affects and is more intimately bound up with the defendant's case. I beseech you to bear in mind that it is not my object to inveigh against the deceased Oppianicus. No: but as I wish to convince you that it was not my client who bribed the court, I would employ as the primary and fundamental principle of the defence the fact that the Oppianicus who was found guilty was a scoundrel and villain of the deepest dye. With his own hands he gave a poisonous draught to his wife Cluentia, the aunt of Habitus here by the father's side. Even in the act of drinking it his victim suddenly cried out aloud, "I die in fearful agony;" nor did she survive the words she uttered, for with that loud ejaculation still on her lips she expired. And besides the suddenness of her death and her dying cry, all the other usual marks and tokens of poisoning were found on her n. dn. p.

- XI. 31. dead body. By poison likewise he killed his brother Gaius. And as if this were not enough, though one would think that in the murder of a brother every form of bloodguiltiness was comprised, he paved for himself beforehand by other enormities a way of leading up to this execrable crime. His sister-in-law, Auria, was pregnant; so when she was thought to be approaching her confinement he procured her death by poison along with that of the child with whom she was about to present his brother. After this he commenced operations against the brother himself: and he, when he had already drained the fatal cup, and was calling out all too late upon his own and his wife's death, and desiring to alter his will, expired even while giving expression to his wish. The woman he murdered that her issue might not debar him from succeeding to his brother's estate, while he deprived that brother's offspring of life before it could take in the kindly light of day; thus giving all to know that nothing could be barred to one¹ from whom not even the protection of its mother's womb had availed to keep his brother's offspring. I remember that when I was in Asia a woman of Miletus was sentenced to death for having procured abortion for herself by drugs in consideration of a bribe received from the heirs-in-default; and rightly, seeing that she had destroyed the hopes of a parent, the continuity of the name, the support of the race, the heir of the house, and a citizen-elect of the state. How much more severely ought the same crime to be punished in Oppianicus! She did violence to her own person—it was herself she tortured; but he procured the same result through the death and torture of another. People in

¹ B. and K. bracket "nihil ei sanctum"—"nothing holy in his eyes."

general do not seem to be able to commit many murders on one man : it has been left for Oppianicus to kill more than one in the person of a single individual.

Cn. Magius, the uncle of young Oppianicus there, had come to know of the man's daring practices ; so when, overtaken by a serious illness, he was leaving his property to his sister's son, he summoned his friends and asked his wife, in the presence of his mother Dinæa, if she were with child. On her replying in the affirmative he requested her after his death to live until her confinement with Dinæa (at that time her mother-in-law), and to take every precaution to preserve and bring safely to the birth the child she had conceived. He then left her in his will a large legacy, to be paid by his posthumous issue, if any, but made no provision for any bequest if the estate should revert to the heir-in-default. You see how he suspected Oppianicus—his motives are obvious. Though he was making the son his heir he would not appoint the father guardian to his offspring. Hear what Oppianicus did, and you will see that the range of Magius's mental vision did not ¹ reach far into the future on his deathbed. The money that had been bequeathed to the woman through the contingent heir he pays down to her on the nail and before it was due—if indeed his proceeding should be called the payment of a legacy rather than the price of abortion ; and she on receipt of the bribe, together with many other gifts which were quoted from the account-books of Oppianicus at his trial, allowed avarice to prevail, and sold to that villain the promise she bore within her bosom, committed as it had been by her husband to her

XII. 33.

34.

¹ *Non longe* ; i.e., though he had foreseen what was likely to happen, he had not after all guarded against it sufficiently. Most MSS. however omit the *non*.

35. care. One would think that nothing further could be added to such depravity, but mark the issue. The very woman who, according to her husband's solemn request, should not so much as have known any house except her mother-in-law's for the usual period of ten months, actually married Oppianicus within five months of her husband's death. But their union was not lasting, for the bond which joined them together was not the dignity of wedlock, but companionship in crime.

- XIII. 36. Take again the murder of young Asuvius of Larinum; was anything more notorious while the facts were still fresh, or a more common subject of conversation among all? There was at Larinum an abandoned and most necessitous scoundrel named Avillius, a person gifted with a kind of talent which enabled him to work upon the passions of younger men. By flattery and cajolery he had become quite a bosom friend of Asuvius; and Oppianicus began forthwith to entertain the hope that he could, by applying this Avillius like some siege-engine, entangle the youthful Asuvius and carry his ancestral wealth by storm. The plan was devised at Larinum, but its accomplishment was transferred to Rome, for they thought that, while they could more easily plot together in retirement, it would be more convenient to carry out such a design in a crowded city. Asuvius went to Rome in company with Avillius, and Oppianicus followed closely in their track. It would take too long, especially as I must hasten on to other points, to tell you of their life when they got to Rome, of their revels, of their shameful excesses, of their profuse and lavish expenditure; Oppianicus being not only privy to their conduct but even lending them his companionship and assistance. But mark the issue of their pretended friendship. / Once when
- 37.

the young man was with some female friend, passing the night at her house and lingering on next day, Avillius according to arrangement made pretends that he is taken ill and wants to make his will. Oppianicus brings witnesses to him to sign it, men unacquainted either with Asuvius or Avillius, and calls him Asuvius; and after the will has been signed and sealed in the name of Asuvius, the witnesses take their departure.¹ Avillius for his part gets well at once; but Asuvius within a short time of the transaction² is inveigled into some sand-pits outside the Esquiline gate, on pretence of a visit to the pleasure-grounds, and is there assassinated. For a day or two he was missed and could not be found in the haunts where he was usually looked for; and as Oppianicus kept saying in the forum of Larinum that he and his friends had lately witnessed his will with their hand and seal, the freedmen of Asuvius and a few friends, on the ground that it was known for a fact that on the day on which their master had last been seen Avillius had been with him and had been seen by many, lay hold on the fellow and bring him before the tribunal of Q. Manlius, who was at that time one of the three Commissioners of Police. / There, although there was no witness nor any one to lay information against him, terrified by a guilty sense of his late misdeed, he at once sets forth the whole story as I have just been telling it, and confesses that it was he himself who, at the instigation of Oppianicus, put Asuvius to death. / By warrant of Manlius Oppianicus is dragged forth from the home where he was in hiding,

38.

39.

¹ Reading with B. and K., "appellat; testamento. . . disceditur; Avillius ipse," &c.

² B. and K., following Mommsen, bracket *brevi illo tempore* and *iret* in the next line; and insert *ab eo* before *quasi* in *hortulos*, &c.

while Avillius is kept in readiness to confront him as King's evidence. Why ask the sequel? Most of you knew Manlius, a man who from boyhood had never had a thought of good fame, of virtuous endeavour, or of the enjoyment which a good reputation secures. At first a wanton and reprobate man about town,¹ he had been, in those days of his country's troubles, raised by the votes of the people to a seat on the bench near the pillory² to which he had often been dragged amid the revilings of a mob. So he strikes a bargain with Oppianicus, receives money from him, and turns his back on the clear case he had begun to hear. And at the trial of Oppianicus this charge in the matter of Asuvius³ was clearly proven by the evidence of many witnesses, as well as by the certain information of Avillius, which was held to implicate Oppianicus as the prime offender⁴—Oppianicus, the poor

¹ *Scurra*, a 'dandy,' or 'town-bred fine gentleman' (Munro, Catull. p. 57), not a mere 'buffoon.' The word implies a certain amount of wit, though not of the highest order. Verr. iii. 146, "qui se ipsum scurræ improbissimum existimari vult, qui a scurris semper potius gladiator quam scurræ appellatus est." Cp. Pro Quinct. 11 and 55; Plaut. Trin. i. 2, 165, "urbani adsidui cives quos scurras vocant."—H. N.

² *I.e.*, the Columna Mænia in the Forum, near which the *Triumviri Capitales*, of whom this Manlius was one (*qui tum erat triumvir*), sat in judgment on slaves and the lowest class of criminals, and made the recognitions in cases which were afterwards remitted to a higher court.

³ *Crimen hoc Asuvianum* might be translated, "this crime committed on Asuvius," but it is much better to follow the analogy of "prohare crimen," "to make good a charge."

⁴ Reading "in quo adligatum Opp. nomen primum esse constabat," with S.T. and Baiter. Another reading is, "inter allegatos Oppianici, nomen primum esse constabat eius quem," &c.; *i.e.*, it was found that among the agents of Oppianicus the first name was—his own. But this sense of *allegatus* is doubtful, and the meaning is forced.

innocent whose ruin you say was compassed by a sham trial.

Again, is it not a patent fact that your father, Oppianicus, murdered your grandmother Dinæa, whose heir you are? When he brought to her that doctor of his who had already more than once given proof of his conquering skill, the lady cries out that she will on no account be attended by one whose attentions had lost her all her children. On this he at once approaches L. Clodius, an itinerant quack from Ancona who chanced to have come to Larinum at the time, and bargains with him, as was shown from his own account-books at the trial, for the sum of two thousand sesterces. Clodius, being in a hurry, and having many fairs still to visit, did the business as soon as he was called in. By the first draught he gave her he put an end to the woman, and then took his departure from Larinum without a single instant's delay. Likewise when Dinæa was drawing out her will Oppianicus, as having been her son-in-law, got the tablets into his hands and ran his finger through the bequests she was making; and having done so more than once, to prevent the erasures from betraying him, he copied out the will on other tablets after her death and forged the signatures of the witnesses.

I pass over many points deliberately, for I fear you may think I have already said too much; you must however believe that at the other periods of his life as well he remained true to his real character. The town council of Larinum were unanimously of opinion that he had tampered with the official register of the censors there. No one would now have any pecuniary transactions with him, nor indeed any dealings whatever; no one of his numerous kinsmen and connections ever

XIV. 40. 10

About £20.

41.

- appointed him guardian to his children; no one thought him a proper person to visit, to meet, to converse with, or to invite to table. All turned from him with contempt and loathing, all fled his presence as they would some savage monster or destructive pestilence. And
42. yet, gentlemen, for all his shamelessness, for all his impiety, for all his crimes, Habitus would never have impeached him if he could have refrained from doing so with safety to himself. Oppianicus, though his enemy, was also his step-father; and his mother, with all her heartlessness and animosity, was his mother still. Lastly no one could possibly be more averse to undertaking an impeachment than was Cluentius, by nature, by inclination, and by his adopted principles of life; but when he had to face the alternative of either impeaching as right and duty demanded, or of dying a premature and inglorious death, he elected to prosecute as best he could rather than lose his life in such a way.
43. To convince you of the truth of what I say, I shall set before you a crime in which Oppianicus was clearly detected and found out. It will prove both points to you at once,—both that my client must inevitably have taken up the prosecution, and that the defendant must as inevitably have been condemned.
- xv. There were at Larinum certain official ministers of Mars called Martiales, men consecrated to the service of that deity by the immemorial religious ordinances of the inhabitants. Of these there was a considerable number; and just as in Sicily there is a large body of “servants of Venus,”² so they of Larinum were in like

² The worship of Venus in her temple on Mount Eryx, on the N.W. coast of Sicily, was kept up by a number of persons of both sexes, who had further to administer the landed property belonging to the

manner accounted of the household of Mars. In this state of things, Oppianicus suddenly began to set up a plea that they were all freemen and Roman citizens. His action gave great offence to the town council of Larinum and to the whole body of the townspeople, and they accordingly requested Habitus to undertake the defence of the case in the name of the corporation. Habitus had kept himself apart from all affairs of this sort; but out of regard for his high standing and ancient birth, and feeling as he did that he lived not for his own interests alone but also for those of his fellow-townsmen and the general circle of his friends, he did not like to disappoint such an unanimous expression of the wishes of the inhabitants. So he undertook the case and carried it to Rome, where the zealous exertions of the two contending parties gave rise every day to great disputes between himself and Oppianicus. The latter was personally a man of savage and morose temper, and fuel was added to his frenzy by the hatred and animosity which his mother bore to Habitus; and the pair¹ thought it would be greatly to their advantage if my client could be detached from the case of the Martiales. Underneath there was also another and a stronger motive at work, by which the insatiable Oppianicus was especially actuated. Unable to bring himself either to make any bequest to such a mother as his was, or altogether to omit in his will the name of her who gave him birth, Habitus had up to the time of this trial never made any sort of will. Knowing this—and

foundation, and who seem to have been at least one degree removed above a state of slavery.

¹ It seems safest to refer *hunc* to Cluentius, though a meaning might conceivably be got by taking *illi* of the supporters of Cluentius and *hunc* of Oppianicus.

indeed it was no secret—Oppianicus foresaw that on his decease his whole property would revert to his mother, whom he could afterwards put to death when the addition to her wealth would have enhanced the reward while the loss of her son would have lessened the danger. Hear then how, fired by these reflections, he sought by poison to take his life. ¹

13 XVI. 46. ² There were two twin-brothers of the township of Alatrium, Gaius and Lucius Fabricius by name, who while resembling each other both in outward appearance and in character formed the strongest contrast to their fellow-townsmen ; for they are, I may say, uniformly distinguished by shining merit and by the almost universal consistency and moderation of their principles of life, as I suppose you are all aware. With these Fabricii Oppianicus had always been on terms of the greatest intimacy. Now I take it you all know what a great influence similarity of tastes and disposition has on the formation of friendships. These men lived as those who thought no form of money-making disreputable. ³ With them originated every sort of knavery and every act of treachery for the defrauding of young men ; and their universal notoriety for vice and depravity had induced Oppianicus, as I have said, many years before, eagerly to court their friendship. | Accordingly he determined at this time to employ the agency of Gaius Fabricius, Lucius being dead, in getting up a plot against Habitus. The latter, who was at the time in bad health, was being attended by Cleophantus, a physician not unknown to fame, and personally a man of repute ;⁴ and his slave

47.

¹ Reading *non ignobili et spectato* : S.T. have *non ignobili sed*, for which *et* has been substituted, *set* and *et* being often interchanged in MSS.

Diogenes Fabricius began to solicit by promises and rewards to administer a poison to Habitus. The slave, who was not devoid of shrewdness, and as the event proved honest and upright, did not refuse to listen to the proposal of Fabricius, but at the same time reported the matter to his master, who again talked to Habitus about it. Habitus immediately put himself in communication with the senator M. Bæbius, a very intimate friend of his ; and I do not suppose you have forgotten the fidelity, forethought, and energy he displayed. His advice was that Habitus should buy Diogenes from Cleophantus, in order that the charge might on his information either more readily be brought home or else be ascertained to be false. To make a long story short, Diogenes changes hands ; the poison is got ready in a few days ; and, in the presence of many reputable men who had privately come upon the scene, a sealed packet containing the money to pay for it is found on the person of Scamander, a freedman of the Fabricii.¹

¹ *Venenum paucis diebus comparatur* is the reading of S.T., and must certainly be due to Cicero himself. *Venenum* occurs alone in sec. 50. (*manifesta deprehensione veneni*), but we have "*veneno pecuniaque*" in 53, which was probably considered a rhetorical exaggeration, and to suit which the present passage may have been altered. The seeming incongruity between the text and sec. 53 is generally explained by pressing the impf. *dabatur*. Diogenes has given Scamander the poison, and the latter is *just going to give him the money*, when the *viri boni* interfere, and apprehend Scamander with both the money and the poison on his person. But it is difficult to believe that Cicero is giving a perfectly straightforward account of the transaction. Diogenes had been solicited to administer the poison himself to Cluentius : why was he selling it to Scamander ?

For the circumstances Mr. Nettleship compares Pro Cæl. 62 : "*cum servi ad dominam rem istam et maleficium Cælii detulissent, mulier ingeniosa præcepit suis ut omnia Cælio pollicerentur : sed ut*

XVII. 48.

Who, in Heaven's name, that knows these facts will say that Oppianicus was ruined by foul play? Was ever man brought to trial more brazen, more criminal, more evidently guilty? Could any abilities, any gift of oratory, any defence, no matter by whom elaborated, have withstood this single charge alone? Again, is there a man who is not convinced that when the plot had been discovered and plainly detected Cluentius had either to face the prospect of death or else to undertake this prosecution?

.49.

Gentlemen, I imagine I have given adequate proof that the charges on which Oppianicus was impeached were of such a nature as altogether to preclude the possibility of an honourable acquittal. / I must now make you understand that when he was summoned to appear on his defence he came before the court a condemned man, as the case had already been decided not once but twice before. / For Cluentius first impeached the man in whose hands he had found the poison—Scamander, the freedman of the Fabricii. The bench was unprejudiced; there was no suspicion of bribery; the court had before it a simple issue, an established fact, a single accusation. Hereupon the C. Fabricius of whom I have spoken above, seeing that the conviction of his freedman would place him in imminent danger, brought a large deputation of the citizens of Aletrium to my house, because he knew that I was their near neighbour¹ and on terms of great

venenum, cum a Licinio traderetur, manifesto comprehendi posset, constitui locum iussit, balneas Senias, ut eo mitteret amicos qui delitescerent; deinde repente cum venisset Licinius, ut venenum traderet, prosilirent, hominemque comprehenderent."

¹ Cicero had a country seat at Arpinum, his birthplace, which was not far from Aletrium.

intimacy with most of them. These gentlemen held the inevitable view of the man's character, but because he was their fellow-townsmen they thought it concerned their own credit to adopt every measure for his defence ; so they asked me to stand by him and take in hand the case of Scamander, which involved the whole question of his patron's liability. Not being able to refuse any request to those estimable men who had such a regard for me, and not having any idea, any more than they themselves had when they sought to put the case in my hands, that the charge alleged was so heinous and so well authenticated, I promised to comply with their every wish.

50. The trial began, and Scamander was summoned to appear on his defence. The counsel for the prosecution was P. Cannutius, a man of pre-eminent ability and a most accomplished pleader ; but he limited his impeachment of Scamander to the three words, "poison was discovered." It was at Oppianicus that all the shafts of the prosecution were levelled. His motive for the plot on Cluentius was revealed, his intimacy with the Fabricii set forth, and the shameless audacity of his life shown up ; and finally the whole indictment, after an exhaustive and telling statement, was finished off with the manifest discovery of the poison. Thereupon I rose to reply—

51. XVIII.

and Heaven will bear witness to my anxiety, my trepidation, and my fears ! I am indeed always very nervous when I begin to speak, and never do so without feeling that not only my ability but also my character and honour are being put to the test ; and this makes me fear I may be thought so brazen as to profess what I cannot perform, or else so dishonourable or so careless as not to do the best I can. But on this occasion I was in such trepidation that I feared every contingency alike. If I said

nothing, I was afraid I might be thought to have no gift of speech at all, or else to have no sense of shame, if I spoke at length in such a desperate case.

- XIX. At last I pulled myself together, and made up my mind that there was nothing for it but a vigorous defence. I reflected that it was generally reckoned creditable for young pleaders such as I then was not to refuse to stand by a man on trial, even though his case might be rather weak. Acting on this idea I gave battle, I disputed every point, I had recourse, so far as in me lay, to every legal device and loop-hole of escape, in such vigorous form that, though I say so with diffidence, I succeeded in making it impossible for any one to think that the advocate had failed to do the best he could for his case. But no sooner had I got hold of any individual

52. point than the prosecutor wrested it from my grasp. Had I asked if there was any enmity between Scamander and Habitus? He admitted there was none, but said that Oppianicus, as whose agent Scamander had acted, had always been and still was my client's bitterest foe. Had I essayed to show that the death of Habitus would have brought no advantage to Scamander? He conceded the point, but said that his whole property would have reverted to the wife of Oppianicus, a man who had shown himself quite an adept at wife-murder. When I availed myself of the plea which has always been accounted most creditable when freedmen are on trial, that Scamander found favour in his master's eyes, he allowed it, but asked in
53. whose eyes that master himself found favour. When I dwelt at considerable length on the argument that Scamander had been led into a snare by Diogenes, and that the agreement between the two had been about something quite different, viz., that Diogenes was to bring

physic, not poison—adding that this was what might happen to any one—he asked why Scamander had gone alone to such a retired spot, and why he brought money sealed up in a packet. At this point finally my case broke down under the weight of evidence given by men of the highest character. M. Bæbius deposed that it was by his advice that Diogenes was purchased, and that he was present when Scamander was arrested with the poison and the money. P. Quintilius Varus, a man of the greatest conscientiousness and the most exalted reputation, deposed that shortly after the fact Cleophantus had spoken to him about the plot against Habitus, and the overtures made to Diogenes. And though at the trial I was to all appearance pleading on behalf of Scamander, while he was nominally the defendant, the person actually implicated and imperilled throughout the prosecution was Oppianicus. Of this he was evidently quite conscious,¹ nor could he in any way disguise it. He appeared constantly in court, called together his supporters,² and employed every weapon of energy and interest. Lastly (and this damaged his case more than anything else), he sat on these very benches reserved for the defence as if he himself were on trial. The eyes of every juror were turned, not on Scamander, but on Oppianicus. His fear and trepidation, the anxiety and doubt depicted on his face, his frequent change of colour, made plain and evident all that was previously matter of

¹ *Obscure ferebat = occultabat.* It is the opposite of *præ se ferre.*

² *Advocare* here does not necessarily mean “to act as advocate,” by giving advice on points of law, &c. The substantive *advocatus* has also the more general meaning of “backer,” and is applied to any one who, by attending in court, lends his countenance to a friend. Cic. Phil. i. 16, “Vellem adesset Antonius modo sine advocatis.” Dem. De Cor. 275. 20, οἱ ἐκ παρακλήσεως συγκαθήμενοι.

XX 55. suspicion only. When the time came for the jury to deliberate on their verdict, C. Junius, the President of the Court, asked the accused, in accordance with the provisions of the Lex Cornelia, which was then in force, whether he wished the votes on his case to be taken openly or by ballot; and he replied, on the advice of Oppianicus, who represented that Junius was on intimate terms with Habitus, that he preferred a ballot. The jury then proceeded to consider their verdict. By every vote, with one single exception which Staienus acknowledged to be his, Scamander was found guilty, on the first hearing of the case. Was there a man among all present at the time who failed to see that the conviction of Scamander implied a verdict against Oppianicus? What was the point decided by his conviction, if it was not that poison had been procured to be administered to Habitus? Further, did the faintest shadow of suspicion attach, or could it possibly have attached, to Scamander, which could have made people think that he had desired on his own account to murder Habitus?

56. Notwithstanding the issue of this trial, by which Oppianicus was virtually and in the eyes of men found guilty, though not as yet by any express judicial verdict, Habitus did not at once proceed to impeach him. He wished to find out whether a jury would deal rigorously with those only whom they ascertained to have actually had poison in their possession, or whether they would consider that the instigators and accomplices of such crimes also deserved to be punished. So he at once impeached C. Fabricius, whose intimacy with Oppianicus led him to think that he had been an accessory to the fact, and on account of the connection of this case with the previous, his request that it should be placed first on the roll was

granted. At this conjuncture, so far was C. Fabricius from bringing my friends and neighbours of Aletrium to me, that he was not even able to secure their support or testimony² for himself. Ordinary kindness had, as we thought, required us to undertake the defence of one with whom we were not unconnected, so long as his case, however doubtful it may have been, was still undecided ; but now that it had been tried we thought it would be impertinent on our part to seek to overturn the verdict. The consequence was that in this dearth of supporters he was perforce compelled to betake himself, so desperate was his case, to the Cepasii, two hard-working brothers who took as a compliment and a personal favour any opportunity of pleading that might be given them. It seems a most inequitable arrangement that whereas in bodily diseases the more complicated they are the greater is the distinction and excellence looked for in the physician, in trials involving civil death the more impracticable a case is the meaner and more obscure is the advocate employed. The reason may perhaps be that the doctor is not called on for anything except his skill, whereas the pleader must also lend the weight of his personal reputation. The defendant is summoned into court, and when Cannutius has stated the case for the prosecution in a few words, as was natural where the issue had already been decided, the elder Cepasius begins his reply with a lengthy and far-fetched introduction. At first his speech is listened to with attention. Oppianicus begins to rouse himself from his despondency and dejection.

57.

XXI

58.

² Over and above evidence directly bearing on the case, it was allowable for a defendant to produce witnesses to his general character (laudatores), with the view of influencing the jury in his favour.

Fabricius himself is in great glee, not seeing that what arrests the attention of the jury is not the eloquence of the speaker but the shamelessness of his defence. When he came to speak to the facts, he made the case even worse by himself inflicting as it were fresh wounds, in such a way that, though he was really doing his best,¹ he seemed at times not to be defending but to be playing into the hands of the prosecution. Flattering himself that he was making a very brilliant speech, he drew upon the secrets of his stock-in-trade for this most telling passage: "Turn now, gentlemen, to the lot of man, turn to its uncertain and ever-shifting chances, turn to the old age of C. Fabricius;" and after several times repeating this highly ornamental "turn" of his, he himself turned, and lo! C. Fabricius had slunk out of court with his head hanging down. The bench began to laugh, whereupon the advocate got his back up and became exasperated at having the case taken out of his hands, and at not being allowed to finish his brilliant "Turn now, gentlemen;"² and he was within an ace of running after his client and dragging him back into court by the nape of the neck, so as to be able to go on with his peroration.]

59.

[On this occasion then Fabricius was found guilty, first by the weighty testimony of his own conscience, and afterwards by the authority of law and the votes of a jury.]

XXII.

[Is it necessary to go on to speak of the character and

¹ If *sedulo* ever meant "designedly" in Cicero, the other reading, *hoc quamquam sedulo faciebat*, which is the reading of most MSS., would give an excellent sense: "though in doing so he spoke advisedly"—i.e., quite unconscious that his arguments made against him instead of for him, "he seemed at times," &c.

² For the constr. cp. "furere crudelis atque importuna mulier, sibi nequaquam, ut sperasset, ea, quæ cogitasset, procedere," 177.

the trial of Oppianicus? He was impeached before that very court after having already been condemned by these two previous decisions; and by the very court which in condemning Fabricius and his accomplice¹ had passed judgment also upon him his case was placed first on the roll for trial. He was impeached on the gravest charges, not only on those which I have briefly stated but on many others besides which I pass over. Oppianicus was impeached, I repeat, before the jury which had condemned his agent Scamander, and C. Fabricius who had been privy to his crime. Whether, in Heaven's name, should one wonder most at his conviction, or at his daring to make any defence at all? Why, what could these jurymen have done? If in the Fabricii they had condemned innocent men, they were nevertheless bound, in trying Oppianicus, to be consistent with themselves and to stand by their former verdicts. Men in general are wont in passing judgment to guard against differing even from the decisions of others, and were they of their own act to rescind the decisions they themselves had come to? They had condemned the freedman of Fabricius for having been the agent in the crime, and his master for having been privy to it; were they now to acquit the author and contriver of the villany himself? Without any previous decision, but in the light of the bare facts of the case, they had condemned the others; were they now to discharge the man who had already been twice condemned before he came to them? This would verily have rendered entirely indefensible the old senatorial monopoly of the jury-courts. It would have branded it, not with groundless

¹ As only one of the brothers was alive at the time of the events which Cicero is narrating (47), it is evident that he uses the plural here of C. Fabricius and Scamander. Cp. sec. 62.

odium, but with merited and conspicuous disgrace; it would have covered it with shame and infamy.¹ What reply, pray, could these jurors have made had any one asked them on what charge they condemned Scamander as they had done? "Why, because he sought to poison Habitus by the agency of his doctor's slave." "And what advantage was Scamander to derive from the death of Habitus?" "None; but then he was the tool of Oppianicus." "You also condemned Fabricius; why?" "Well, he was on very intimate terms with Oppianicus, and his freedman, moreover, was detected in the crime; and so we didn't think it likely that he had been without a share in the plot." If then they had actually acquitted Oppianicus after having themselves condemned him twice over, could any one have endured such shameful conduct in our courts of law, such inconsistency in the verdicts, such wanton caprice on the part of the jurors?

62. ¶ But if you see the point which has now been clearly made out by all that I have just been saying—namely that the defendant in that action must inevitably have been condemned, especially by the very jury which had passed the two previous judgments—you cannot fail at the same time to see that it is impossible that the prosecutor can have had any motive for wishing to bribe the tribunal.

XXIII.

I ask you, T. Accius, abandoning for the time every other argument, whether you believe that Fabricius and his accomplice were also innocent of the charge on which they were found guilty, and whether you will assert that at their trials too the court was bribed, when in the one case the defendant was acquitted by Staienus alone, while in the other he even went the length of condemning himself? Again, if they were guilty, of what crime pray

¹ Vide Introduction, p. 21.

were they guilty? Was any other charge brought against them except the procuring of poison to take the life of Habitus? Was any other point discussed at their trials except this plot which Oppianicus laid against Habitus by the agency of Fabricius? You will find there was no other, gentlemen—none. The facts are still within our recollection, and the official records exist. Confute me if I am saying what is not true. Read the depositions of the witnesses; point to anything beyond this attempt at poisoning on the part of Oppianicus, that was urged against those defendants, I do not say as a direct charge but even as an aspersion. Much could be said to show how inevitably the verdict must have been what it was, but I shall hasten to meet your expectations. For though you are listening to me with a courtesy and attention never in my opinion accorded to any one before, still your unexpressed expectations have for some time past been summoning me on to another point. I seem to hear you interrupting me with the cry, “What! do you deny that some one bribed the bench at the trial of Oppianicus?” “No, I do not; what I say is that it was not my client.” “Who was it then?” I fancy that first of all, even if the issue of the case had been uncertain, the probability would still be that it was he who feared a sentence of guilty for himself, rather than he whose only anxiety was lest his opponent should be acquitted. In the second place, since it was *not* doubtful what the verdict must inevitably be, I think it is surely more likely that he had recourse to bribery who had only this expedient to trust to,¹ than he who had every ground for confidence. Lastly, he surely was more probably the guilty party who

63.

¹ Reading “qui sibi alia ratione diffideret;” “aliqua” for “alia” would mean “who had some reasons for mistrusting his chances.”

64. had twice been unsuccessful before that very court, than he who twice had made good his case there.] This one point at least no one surely will be so hostile to Cluentius as not to grant me. If it is an established fact that some one practised bribery at the trial, it must have been either Habitus or else Oppianicus. If I prove that it was not Habitus, I convict Oppianicus; if I show that it was Oppianicus, I exculpate Habitus. Accordingly though I have given sufficient proof that my client had no motive for bribing the jury, which of itself shows that it must have been Oppianicus, listen nevertheless to a separate statement of the evidence against the latter.

XXIV. I do not purpose to adduce the arguments, weighty as they are, that the guilty party must have been the man who was in danger of conviction, who feared the issue, who had no other hope of acquittal, and who was always noted for unparalleled audacity. Considerations of this kind are not wanting; but since the matter with which I am dealing is not doubtful but notorious and evident, it would be superfluous to enumerate them in detail. 65. I assert that a large sum of money was given by Staius Albius to C. Ælius Staienus, a member of the jury, for the purpose of bribing the tribunal. Does any one deny it? I call on you, Oppianicus, on you, T. Accius, both of whom—you by your eloquence, he in silent loyalty to his father's memory—are deploring the sentence passed on that occasion. Dare to deny that Oppianicus gave money to the juror Staienus; deny it, I repeat, though it is my turn to address the court.¹ Are you unable to make

¹ *Meo loco*. The common reading, *in eo loco*, "where you sit," may be defended, though, as Madvig says (*Opusc.* i. 122), *ex isto loco* would be preferable if the meaning is "in eo loco ubi sedes, ut ne consurgendum quidem tibi sit." *Meo loco* = *etsi meus dicendi*

the denial with regard to what you reclaimed, admitting the fact and taking away the money? How then, I ask, can you have the face to speak of bribery and corruption when it was by your side, as you confess, that money was given to a juror before the trial, and after the trial taken from him? But how was all this managed? [Gentlemen, I shall carry the thread of my narrative a little further back, and reveal in such a way all that has long lain hidden in obscurity that you will imagine you are eye-witnesses of what occurred. Have the goodness to listen to the sequel of my story with the same attention with which you have hitherto heard me. I assure you I shall say nothing that might be thought unbecoming the quietude of this assembly, nothing unworthy of your attentive and interested hearing.

66.

No sooner did the impeachment of Scamander give Oppianicus a hint of his imminent danger than he immediately set himself to become intimate with Staienus, a needy and daring fellow, gifted with a large experience of bribing courts of law, and moreover at this time himself a juror. By the favours he bestowed on him he had made such headway that first of all at the trial of Scamander he received from him a more interested¹ support than was consistent with the honour of a jurymen.

est locus: cp. ἐν τῷ ἐμῷ ὕδατι. *In eo loco* could not mean "while I am discussing the topic," as some have taken it; on either reading the orator is inviting the other side to do what they could do only by his permission, viz., to interrupt his speech at once with a denial if they thought they could disprove what he was saying.

¹ For this sense of *cupidus* cp. Pro Cæcina, 8, "cupidior quam sapientem iudicem esse æquum est;" in Vatin. 40, "cupidissime falsum testimonium dicere;" and *cupiditas* for "partisan spirit" in Verr. 35, Pro Plancio, 43. The word seems to have the same sense in sec. 152.

67. Afterwards however, when Scamander had been acquitted by one vote, that of Staienus, while Scamander's master had not even been able to acquit himself, he made up his mind that he would have to employ more drastic¹ measures to ensure his deliverance. Thereupon he began to beg for assistance to his person and estate from Staienus, regarding him as a man of the shrewdest invention, of the most shameless daring, and of the most vigorous execution; for he had a share of all these qualities, though not so great as he pretended.

XXV. Now you are all aware, gentlemen, that even brute beasts, obeying the promptings of hunger, commonly go back to the place where in time past they have had a meal.

68. Two years previous to this, our friend Staienus, having undertaken the case of Safinius Atella's estate, had said that with six hundred thousand sesterces he would bribe the bench of jurors. He received this sum from the ward, and kept it to himself, refusing to give it up after the trial was over, either to Safinius or to those who had purchased the estate. When he had spent all the money, and had left nothing even for the necessaries of life, not to mention the gratification of his desires, he made up his mind that he would have to fall back on his old game of plunder and judicial embezzlement. Seeing the now desperate position of Oppianicus, whom the two previous verdicts had left without a leg to stand on, he roused him from his despondency by the promises he made, and bade him withal never despair of deliverance. Oppianicus on his part began to implore the fellow to point out to him some way of bribing the jury;

About
£6,000.

¹ *Acriora*, "more drastic," opp. to *leniora*. Celsus, vi. 6, 14, "*acria medicamenta*," opp. to *lenia*: ib. vi. 6, 1, "*minus acrem curationem*."

on which he told him, as Oppianicus afterwards informed us, that there was not a man in the country who could do it except himself. But at first he began to make difficulties, saying that he was standing for the ædileship against men of the highest rank, and that he was afraid of incurring unpopularity and displeasure. His scruples were subsequently overcome; and after beginning by demanding an immense sum of money, he came down in the end to a negotiable figure, and bade him send to his house six hundred and forty thousand sesterces. As soon as this sum was brought to him, the infamous fellow began to ponder and reflect in some such way as this: "Nothing could suit me better than that Oppianicus should be condemned. If he is acquitted, I shall either have to distribute this money among the jurors, or else give it back to him; whereas if he is found guilty no one will seek to recover it." So he bethinks himself of a remarkable device. Gentlemen, you will more readily credit the true statement I am making if you will have the goodness to go back a considerable space and recall to mind the life and disposition of Gaius Staienus; for it is just the opinion we have of the character of an individual that enables us to determine what his conduct may or may not have been. |

69.

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£6,400.

70.

Being necessitous and extravagant, audacious, cunning, and treacherous, and seeing such a large sum of money lying in his wretched poverty-stricken home,¹ he began to turn his mind to all sorts of roguery and fraud. "Shall

XXVI.

¹ Reading "miserrimis in locis et inanissimis," which, though awkward, seems nearest the MSS. T. has *miserrimus*, and Classen brackets the *et*. B. and K. give the ingenious reading, "miserrimus in loculis ante inanissimis," "loculis" being a conjecture of Ernesti. This might be rendered "and seeing, poor wretch that he was, such a large sum of money in his hitherto poverty-stricken coffers."

- I give it to the jurors? If I do, what shall I gain for myself save danger and disgrace? Can't I hit on some way of making Oppianicus's conviction inevitable? What if some accident (nothing in this world is impossible) should deliver him from danger: would I not have to give it up? Well, let's give him a push while he is on the brink, and dash him down to destruction." The plan he took was to promise money to certain unprincipled jurors, which he would afterwards keep to himself; for he thought that the men of character among them would of their own accord deal rigorously with the case, and he wished to make those of less principle enraged with Oppianicus for having played them false. So, with his usual wrongheadedness and perversity, he begins with Bulbus—though one doesn't begin dinner with dessert.¹ Finding him in low spirits and inclined to yawn, because it was long since he had made any money, he gives him a playful poke: "Harkye, Bulbus," says he, "will you lend me your aid, so that you and I may not serve our country for naught?" The other, as soon as he heard the words "not for naught," exclaims, "I'll follow wherever you like to lead; but what's your game?" Thereupon he promises him forty thousand sesterces in the event of Oppianicus's acquittal, and asks him to approach the others with whom he was in the habit of gossiping. He himself, the contriver of the whole scheme, goes on to sprinkle a drop of seasoning¹ (Gutta) on his vegetable (Bulbus);² after which our vegetable friend was not

About
£400.

¹ The joke, if so it may be called, turns on the name Bulbus, which properly means a bulb, or vegetable. Vegetables were not eaten at the beginning of a meal; hence the wrongheadedness of the fellow!

² This is said to be a further development of the joke. "Conditor," according as the accent is long or short, may mean either "he who

thought at all a bitter pill by those who had swallowed a little morsel of hope from his conversation. One day passed, and then another, and the matter still seemed rather unsettled; there was no appearance of an intermediary agent or a voucher for the payment of the money. On this Bulbus with cheerful countenance accosts the fellow in his most winning manner: "Holloa, Pætus"—for this was the surname which Staienus had chosen for himself from the illustrious house of the Ælii, lest if he called himself a Ligur he might be thought to be using a tribal rather than a family surname:—"Holloa, Pætus," says he, "about that business of which you spoke to me; they are asking me where the money is." Then did this most unconscionable impostor, who made his living by his profits in courts of justice, and who was already brooding in his hopes and imaginations on the money which he had stowed away, knit his brows. Call to mind his features and those unreal expressions he used to put on. He complains that Oppianicus has played him false! He who was one huge piece of roguery and falsehood, and who by zealous application and by a sort of knavish craft had given an additional flavour to the vices with which nature had endowed him, roundly asserts that

spices" (*condio*), or "the founder" (*condo*.) This "*conditor*" "pours a drop of liquid over his onion," *i.e.*, associates Gutta with Bulbus. Perhaps however Cicero is innocent of this subtlety, and by "*conditor*" simply meant "*contriver*."

* Staienus had the impudence to call himself C. Ælius Pætus Staienus. Cicero hints that when he "adopted himself" (*Brutus*, 68. 241) into the Ælian family he was careful to choose the cognomen Pætus instead of Ligur—both being names of branches of the family—lest it should be thought that he belonged to the barbarous tribe of Ligurians. Cp. *Pro Sest.* 69, of Ligus, "qui cognomen sibi ex Æliorum imaginibus adripuit, quo magis nationis eius esse quam generis videretur."

Oppianicus has defrauded him, and says moreover, to prove it, that in the open voting which was to be the order of the day he would give his vote for a conviction.]

XXVII. 73.

A rumour had spread on the bench that there had been some talk of bribery among individual jurors, for the matter had not been kept as secret as it should have been, while on the other hand it was not so notorious as on public grounds it deserved to be. When all were thus in the darkness of uncertainty, the shrewd Cannutius, who had somehow got wind of the fact that Staienus had been bribed, thinking that the final arrangement had not yet been made, resolved of a sudden to get the marshal to proclaim that the pleadings of counsel were finished. On this Oppianicus felt pretty confident, believing as he did that Staienus had completed his arrangements. The number of jurors about to deliberate on the verdict was thirty-two. Sixteen votes would ensure acquittal, and forty thousand sesterces apportioned to each individual juror ought to make up that number, crowned as it would be with a seventeenth from Staienus himself in the hope of rewards still greater. But, as luck would have it, Staienus was not present in court when this sudden move was made; he was defending some case or other before a civil commissioner.

74

Habitus did not mind this in the least, no more did Cannutius, but it was different with Oppianicus and his advocate, L. Quinctius. The latter being at the time a tribune of the plebs, protested in most abusive language to C. Junius, the President of the Court, against allowing the jury to proceed to consider their verdict without Staienus; and thinking that the attendants were purposely remiss in the matter of summoning him, he himself left the public trial and went to the tribunal

where Staienus was engaged in a civil suit, dissolved it
in virtue of his tribunitian prerogative, and brought the
absentee back with him into court. 75. The jury rise to
retire, but not before Oppianicus had said, as he was
then entitled, that he wished the voting to proceed
openly; his object being that Staienus might know how
much he owed and to whom he owed it. The jurors
 were of different sorts. A few were venal, but these few
 were all in a rage; just as people who make a practice
 of taking bribes at political elections¹ are always dead
 against the candidates whose coin they believe has been
 embezzled, so here those of the same stamp among the
 jury had come into court with wrath against the accused
 in their hearts. The rest thought him eminently guilty;
 but they were waiting to see how those would vote whom
 they believed to have been bribed, when they would be
 able to determine who was likely to have been guilty of
 corrupt practices. Lo and behold! the issue of the lot
 XXVIII. assigns the responsibility of voting first to Bulbus, Staienus,
and Gutta! and everybody is on the tiptoe of expecta-
 tion to see what verdict these unprincipled and mercenary
 jurors would record. Without any hesitation all three of
 them vote "guilty." On this people began to feel un-
 easy, and were not quite clear about what had been going
 on. Then the shrewder ones among them, men who
 belonged to the good old school of jury-courts, being
alike unable to acquit a most guilty criminal, and un-
willing without further inquiry to vote right off² for a

¹ Held in the Campus Martius (in campo).

² "Re illa incognita primo condemnare." "Primo" here is opposed to "paulo posterius patefacta re" (sec. 106). They had an opportunity of learning the facts at the further hearing of the case (ampliatio), and then they voted guilty. ("primo" = "prima actione." Cp.

conviction in a case where it had come to be suspected that bribery had been brought into the field against the defendant, held the charge not proven. Certain austere persons again, who believed that the motives with which each individual acted ought to be taken into account, thought that there was nothing for it but to stand by their previous decisions, in spite of the fact that it was only on receipt of a bribe that others had returned a righteous verdict; and so they found him guilty. Five there were in all whom inadvertence, or compassion, or some suspicion or other, or interested motives, prompted to vote for the acquittal of your guiltless friend.]

77. Immediately on the conviction of Oppianicus, L. Quinctius, an out-and-out demagogue, who made a practice of filling his sails with every wind of hearsay and the gossip of public meetings, believing as he did that the senatorial administration of justice was by this time falling out of favour with the people, imagined that he had before him an opportunity of making the unpopularity of that order the means of his own aggrandizement. He delivers one or two impetuous and virulent harangues, crying out with the authority of a tribune that jurymen had taken bribes to convict an innocent man, and representing that the issue involved the fortunes of every individual, that there was an end of trial by jury, and that no one who was at enmity with a man of wealth could possibly be beyond the reach of danger. People who were ignorant of the whole affair, never having set eyes on Oppianicus, and believing that an excellent and thoroughly respectable person had been

Verr. ii. 1. 26, "non *primo* iudicare" opp. *ampliare*; and Livy xliiii. 2. 6, "bis ampliatus, tertio absolutus est reus."—H. N.)

undone by bribery, began in all the heat of suspicion to canvass the matter openly and to demand an investigation into the facts. It was at this very time that Staienus came by night, at the summons of Oppianicus, to the house of that worthy citizen T. Annius, an intimate friend of my own. You all know the rest—how Oppianicus tackled him about the money, how he promised to give it up, how their whole conversation was heard by reputable persons who had at the time intentionally placed themselves in concealment near at hand, how the matter was brought to light and dragged before the court, and the whole sum forcibly extorted from Staienus.

78.

The character of our friend Staienus had come to be so well known and so thoroughly familiar to people at large that no discreditable suspicion failed to fit in with it. Those who attended the meetings did not know that it was money which he had engaged to expend on behalf of the defendant that he had kept to himself; nor indeed were they in the way of getting that information. They were aware that there had been some talk of bribery at the trial. They were told that the accused was innocent of the charge on which he was condemned. They found that Staienus had voted for his conviction; and they inferred from what they knew of the fellow that he had not done so for nothing. A like suspicion attached to Bulbus, to Gutta, and to some others.

XXIX.

I avow, therefore—and I may do so without danger now that I am speaking before this honourable court¹—

79.

¹ This seems to be the most satisfactory rendering of *hoc praesertim in loco*, which is a complimentary phrase like *hi tales viri*. Or it might possibly be, “now that I have come to this part of my speech;” in which case the orator means to say that now that he has

that owing to the general ignorance which had hitherto prevailed I do not say of the life but even of the name of Oppianicus, owing also to the existing belief that it was a crying shame that an innocent man should have been undone by bribery (a suspicion which was further confirmed by the bad character of Staienus and the disrepute of certain jurors who resembled him), and owing moreover to the agitation of L. Quinctius,² a man who not only held high office but was personally well fitted to inflame the passions of a mob—I avow, I say, that the strongest feelings of hatred and prejudice were kindled against the court that heard the case. Nor do I forget that C. Junius, who had presided at the trial, was cast into the still raging furnace of popular displeasure.

Though an ex-ædile and one to whom general opinion pointed as a coming prætor, he was thrust forth from the legal profession—aye, and from public life itself—and that not by deliberate discussion but by unreasoning clamour.

80. And I feel no regret that I am appearing on behalf of Aulus Cluentius now rather than then. His case remains the same in its absolute unchangeableness, but the incidental unfairness and prejudice have disappeared: the element of disadvantage in the circumstances of the period can do us no harm, while we have still the benefit of the intrinsic merits of the case. Accordingly I am sensible of the attention with which I am now being heard, not only by those with whom lies the prerogative of judgment, but also by those who have

had an opportunity of stating the facts, now that "truth has lifted up her voice against calumny" (88), the *invidia* can no longer do his client's reputation any harm.

² Quinctius was counsel for Oppianicus, but the phrase *causam agere* seems here to allude to his proceedings out of court. Cp. "hæc tum agente Quinctio," 108.

only to form an opinion. But if I had been speaking in those days, I should not have been listened to; not that the case would have been different—it would have been the same as now—but because the occasion would have been different. To show you that this is indeed so, let me ask who at that time would have dared to say that Oppianicus was guilty of the charges on which he was convicted, and who dares now to say he was not? Who at that time could have shown that it was Oppianicus who bribed the tribunal, and who can deny it now? Who at that time would have been permitted to point out that it was only after he had been already condemned by two verdicts of quite recent date that Oppianicus was brought to trial, and is there a man that will endeavour at this time of day to refute the statement? When therefore we have eliminated the prejudice which time has toned down, my words have depre- cated, and your uprightness and impartiality have put far from the deliberate inquiry into the truth, what residue have we left in the case? We are agreed that bribery went on among the jury, and the question concerning it is, with whom did it originate, with the prosecutor or with the defendant? What the former says is this: “In the first place, as I was prosecuting on the most weighty charges, there was no need for bribery; secondly, as the man whom I brought before the court had been already condemned, not even bribery could have saved him; and lastly, even had he been acquitted, my personal fortunes would not have suffered in any way.” What has the defendant to say for himself? “In the first place, I stood in awe of the multitude and the enormity of my misdeeds in themselves; secondly, I saw that when Fabricius and Scamander were convicted as accomplices

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81.

in my crime I was also involved in their condemnation; and lastly, my position was so critical that my personal fortunes were entirely dependent on the issue of one single trial."

82. Well then, since Oppianicus had many weighty motives for bribing the court, while my client had none at all, let us try to find out where the money came from. Cluentius has kept his account-books with the most scrupulous accuracy, and in this we have a guarantee that nothing can have been either added to or taken away from his possessions without being noticed.¹ For eight whole years you have been engaged in the study of this case, discussing, examining, and raking up in the account-books of others as well as of my client everything that bears on the subject; and all the time² you have come upon no vestige of bribery on the part of Cluentius. But in tracking Oppianicus have we only footprints to guide us, or can we under your leadership³ get at the very place where our quarry made his lair? There are deposited in one place six hundred and forty thousand sesterces; they are deposited with a man of the most shameless daring, who is moreover a member of the jury. What more would
83. you have? Do I hear you say that it was Cluentius and not Oppianicus who set Staienus on to bribe the bench? Why then were Cluentius and Cannutius indifferent about his absence when the jury were going to consider their

¹ It need hardly be remarked how utterly valueless this argument is. Nothing could have been easier than for Cluentius to conceal all traces of bribery in his account of his expenditure.

² Cum interea. Roby, 1732.

³ *Vobis ducibus*, B. and K. Classen reads "iudicibus." Mr. Nettleship (*Journ. Phil.* No. xvi., 1879), proposes to read "vobis indicibus," comparing "sine duce ullo, sine indice," in Verr. ii. 1, 105.

verdict? Why did not those who had given the money¹ insist on Staienus being in his place when they asked the jury to retire? Why was it Oppianicus who complained, and Quinctius who importuned? Why had the tribune's prerogative to be asserted in order to prevent the jury from retiring to deliberate without Staienus? But you say Staienus voted for his conviction. Yes, for this was the guarantee he had given Bulbus and the others to make them think that Oppianicus had played him false. If therefore you have a motive for bribery, the money, and Staienus with all his roguery and daring on the one side, and on the other honour, a reputable life, no suspicion of any such expenditure, nor any motive for bribery, now that the truth has been revealed and all misrepresentation done away with, suffer the infamy of that disgraceful deed to pass over to the side on which the other enormities have been fastened; suffer prejudice to depart at length from one to whom, as you see, no offence has ever been brought home.

But I shall be told that it was not to bribe the bench that Oppianicus gave Staienus the money, but to bring about a reconciliation.² Is it possible that a man of your insight, Accius, and of your experience and practice can make this statement? People say that he has most wisdom to whom the appropriate idea spontaneously suggests itself, while he comes next who falls in with the happy thoughts of his neighbour.³ The reverse holds good of folly; for he who has no ideas at all is not such a fool as he who approves his neighbour's foolish notions.

XXXI. 84.

¹ *Qui pecuniam dederant*, B. and K., who also continue the interrogation to *effectum est*.

² *I.e.*, between Cluentius and Oppianicus.

³ Cp. Hesiod, Works and Days, 293, sqq.

85. This idea of effecting a reconciliation Staienus hit upon while the matter was still of recent date, and when they had him by the throat ; or, if you like, the hint was given him by P. Cethegus, as was commonly reported at the time. You may remember that what men said at the time was that Cethegus, hating the fellow as he did, and being disinclined to allow his villany to stalk abroad in the state, and seeing moreover that one who had admitted that he had while a juror secretly and irregularly received a bribe from a defendant could not possibly escape justice, had given him insincere advice. If Cethegus showed a want of principle in this, I suppose he only wanted to get rid of an opponent ;¹ but if on the other hand the situation was such that while it was impossible for Staienus to deny having received the money nothing could be more dangerous nor more discreditable than to confess for what purpose he had received it, then no fault can be found with the advice which Cethegus
86. gave. But there is a difference between the position in which Staienus was then and that in which you are now, Accius. In his really desperate plight anything he could have said would have been more creditable to him than if he confessed to the fact ; but I wonder that you should have actually revived the very farce which was at that time hooted down and rejected. Why, how could Cluentius have become reconciled to Oppianicus, or to his mother either ?² Their names stood entered in the official

¹ Probably for the ædileship, for which Staienus was at present a candidate (sec. 69). Cethegus wanted him to be convicted and so got out of the way.—“ Si fuit ” = if (as I grant) Cethegus showed a want of principle in this, I explain his conduct by his desire to be rid of an opponent.—H. N.

² Reading “ Qui enim . . . cum Oppianico Cluentius ? qui cum matre ? ” with Baiter, who follows Garatoni.

register as prosecutor and defendant; Fabricius and his accomplice had been convicted; should another prosecutor come forward Albius could not get off, and on the other hand Cluentius could not abandon the prosecution without incurring the disgraceful imputation of having made a false accusation. Was it then to induce the prosecutor to play into the hands of the defence? That would also come under the head of corrupt practices. But for this purpose what necessity was there for making a juror the go-between? And at all events what reason was there for employing throughout the negotiation the agency of Staienus, who was quite a stranger to both parties, and withal a most despicable and disreputable fellow, rather than that of some respectable person or other on terms of friendship and intimacy with both?

XXXII. 87.

But why do I argue the matter at length, as if there were any doubt about it, when the money given to Staienus bears on the face of it, by the figure of its sum total, the purpose for which it was intended as well as its amount? I say that sixteen jurors had to be bribed to secure the acquittal of Oppianicus, and that six hundred and forty thousand sesterces were lodged with Staienus? [If the object was, as you say, to patch up the quarrel, what is the meaning of this additional sum of forty thousand sesterces? If, as we say, the intention was to give each of the sixteen jurors forty thousand sesterces apiece, Archimedes himself could not have made a more exact calculation.]

But you will tell me that by many verdicts already given it has been decided that it was Cluentius who bribed the jury. On the contrary, that direct issue has never at all up to this time been expressly brought before a court of justice. Though the case has been so much discussed

88.

and so long canvassed, it has this day for the first time been defended, and this day for the first time has truth, relying on your honourable court, lifted up her voice against calumny. But let us see what those many verdicts are of which you speak. For I have fortified myself against every argument, and stand prepared to prove that the verdicts which were said to have been subsequently returned with reference to the trial in question were either liker the disastrous action of some storm than the calm deliberation of a law-court, or did not make in any way against *Habitus*, or were even in his favour, or else were of such a kind that they have never been either called or considered judicial decisions. And here, more that I may conform to my customary practice than because you are not doing so of your own accord, I shall request you to favour me with an attentive hearing while I discuss individually the verdicts above referred to.

89.

XXXIII.

C. Junius, who had presided at the trial, was convicted. You may also say, if you like, that he was convicted while he was still president of the court. So far was the tribune from allowing any grace in the action that he did not even show any regard for the provisions of the law.¹ At the very time when it was not legal for Junius to be withdrawn from the court in which he was presiding to

¹ *Nihil laxamenti* goes properly with *causa*, and with *legi* by a kind of zeugma. Quinctius neither granted the ordinary respite, allowed a defendant to get up his case (said to have been generally ten days), nor did he observe the law which forbade a *iudex questionis* being brought to trial during his term of office. A less satisfactory explanation would be to make *causa* mean the 'general circumstances of the case,' as frequently in this speech, when we might translate, "so far was the tribune from showing any consideration for equity that he availed himself of the utmost rigour of the law." Cp. the antithesis between *causa* and *armis* in Tacitus—arbitration and arms.

any other department of official business, he was himself haled away for trial. And for what sort of trial, I ask? for your looks, gentlemen, give me such encouragement that I am minded to speak out freely what I had thought should be kept quiet. Was it really a trial, I ask, a formal inquiry, a judicial process? I shall suppose that it was. Let any one who pleases of the populace whose excitement was humoured on that occasion tell us to-day what was the real charge on which C. Junius was impeached. No matter whom you ask, the answer will be the same: he took a bribe and compassed the ruin of an innocent man. This is the general belief; but if such had been the case he ought to have been impeached under the same law as *Habitus*. "But then he was himself hearing cases under that law." *Quinctius* could have waited a few days. "But he wished to impeach him while still in office, and before the prejudice had time to die down." From this you will see that the prosecutor placed all his hopes, not in the justice of his case, but in the circumstances of the time and in his official position. He asked for a fine. Under what statute? Because according to him *Junius* had not taken the oath of office, an omission which never before did any one any harm, and because the blameless and painstaking *C. Verres*, prætor of the city, had no note of the appointments he had made to the vacancies on the bench in the ledger which was produced in court at the time, full of erasures.¹

¹ The process of *subsortitio* was conducted in each case by the *iudex questionis* with the authority of the city prætor (cp. on 103). Sometimes it was the challenging (*reictio*) of prosecutor and defendant that had brought down the jury below its proper number; but in the trial of *Oppianicus* some other cause had probably intervened not long before the end of the case. *Junius* was charged with having chosen *Fidiculanus* out of the regular order (103); and he was sus-

On these most trivial and inconclusive grounds, gentlemen, which should never have been brought before a court of law at all, C. Junius was found guilty. It was not the justice of the charge that crushed him, but the excitement of the time.

XXXIV. 92.

Do you think that this verdict ought to count against Cluentius? Why? Granting that Junius had not complied with the law in filling up the vacancies on the bench, or that he had at one time or another neglected to take some oath of office, does it follow that his conviction involved any decision affecting Cluentius? "No; but the ground of his conviction under these laws was that he had committed an offence against another statute." Is it possible for those who make this admission to maintain in the same breath that his was a regular trial? "The people of Rome were on that occasion hostile to C. Junius for the reason that they believed that his agency had been employed in the corrupt practices at the trial of Oppianicus." Well then, has any change taken place in the facts of the case now? Is the issue, the motive of his trial,¹ the complexion of the whole affair, in any way

pected generally of having selected such persons as would be ready to vote for the conviction of Oppianicus (113). Verres had either not been consulted at all in the matter or else disowned the proceeding, nor was there any entry in his books regarding it; and as the newly-appointed jurors seem all to have voted against Oppianicus, it was held probable that they as well as Junius had been bribed by his accuser. In his impeachment of Verres (ii. 1. 158) Cicero directly accuses him of having been in league with Junius, and says that, fearing to suffer his fate, he afterwards falsified his official lists. Here he seems only to insinuate that the fact that no note of the *subsortitio* could be found in his books was not to be wondered at considering the kind of man he was.

¹ "Ratio iudicii" = ἡ τοῦ ἀγῶνος προαίρεσις, i. e., the 'motif' of the trial. Cp. "ratio accusationis," sec. 19.

different now from what it was then? I do not think that anything of what has been done could have been altered. What then is the reason why my defence is being listened to now in such attentive silence, whereas in those days Junius was deprived of the privilege of defending himself? Because in those days the only factors in the case were prejudice, misrepresentation, suspicion, public meetings inflamed day after day by the arts of the agitator and the demagogue. The tribune who inveighed at these meetings also appeared to prosecute in court, and he came there not only from his meeting but with it trooping after him. It seemed as if the Aurelian Staircase,¹ then recently erected, had been built to serve as a kind of theatre for the trial; and when the prosecutor had packed it with an excited throng the friends of the accused had never a chance of rising to their feet, much less of speaking on his behalf. Not long ago, before my colleague C. Orchivius,² the jury refused to entertain an action brought against Faustus Sulla for the recovery of public moneys remaining in his hands;³ not that they thought either that Sulla was above the law, or that a suit about public moneys was so trivial as to be beneath their notice, but because they did not believe that the case could be fairly tried with a tribune of the people conducting the prosecution. Well, shall I compare

93.

94.

¹ In the forum.

² He was Cicero's colleague in the prætorship. Cp. 53. 147.

³ Sulla the dictator, the father of Faustus, had done all he could to curtail the powers of the tribunate. These powers were restored in the consulship of Pompey and Crassus (B.C. 70): but we have in the attempt to raise the action referred to in the text an indication that, though Sulla himself had now been dead twelve years, the tribunes still bore a grudge against the son of the man who had robbed them of their rights.

Sulla with Junius, the tribune I refer to with Quinctius, or indeed the one occasion with the other? Sulla had great wealth and a multitude of kinsmen, relatives, connections, and dependents; Junius enjoyed only a small and insignificant share of these advantages, obtained and acquired by his own personal exertions. In the one case the tribune was a man of moderation and foresight, and so far from being factious himself was the enemy of factiousness in others: in the other he was a quarrelsome, litigious, and unruly demagogue. On the one occasion there was peace and quietness, on the other nothing but commotion and bad blood. Nevertheless in the case of Faustus the jury held that a defendant was unfairly handicapped when his opponent's authority as prosecutor was further backed by the weight of high official position. This consideration, gentlemen, you should in your wisdom carefully ponder, and thoroughly acquaint yourselves with the harm and the danger to which each one among us may be exposed from the violence of the tribunate, particularly when inflamed by prejudice and by public meetings worked upon by seditious arts. Why, even in our golden days, when men shielded themselves not by courting the applause of the mob but by their high character and uprightness, neither P. Popilius ¹ nor Q. Metellus, ²

XXV. 95.

¹ P. Popilius Lænas had made himself conspicuous by prosecuting those who had abetted Tib. Gracchus in the struggle to carry his measures of reform. Accordingly, Gaius Gracchus in 123 brought in a law that was obviously directed against him, and he immediately retired into exile.

² Metellus Numidicus preferred to withdraw into exile (100 B.C.) rather than submit to the indignity of taking an oath by which the demagogue Saturninus, who was countenanced by Marius, sought to secure the ratification of an agrarian law which he had proposed to the senate.

though both men of the highest renown and distinction, was able to stand against a tribune's violence ; much less can we be safe in these degenerate times, and with such magistrates, unless we can rely on your wisdom and the redress of courts of justice.

The trial of Junius then, gentlemen, had no resemblance at all to a regular trial. No moderation was observed, traditional usage was disregarded, the case for the defence was never stated. It was a piece of high-handed violence, resembling, as I have often said, a destructive storm—anything rather than a regular trial, or a formal deliberation or inquiry. But even if there be any one who believes it *was* a regular trial, and who thinks that the verdict thus given ought to be maintained, he must nevertheless keep this case separate from that of Junius, from whom a fine was sought to be recovered either because he had not taken the oath of office, or else had not conformed to law in filling up a vacancy on the bench of jurors. The case of Cluentius can have no possible connection with the statutes under which that fine was claimed.

But you tell me that Bulbus also was found guilty. Say further that he was found guilty of treason, and you will see that the one trial has nothing to do with the other.¹ “But his connection with the trial of Oppianicus was brought up against him.” Granted ; but it was also proved from the despatches of C. Cosconius and the evidence of many witnesses that he had made overtures to a legion in Illyricum, a charge with which it was the

¹ *I.e.*, this present trial of Cluentius is in no way connected with that of Bulbus : the conviction of Bulbus cannot be made to prejudice my client's case. It might be ‘his trial was in no way connected with his conduct at the trial of Oppianicus.’

special province of the court he came before to deal, as the crime fell under the law of high treason. "But still it told heavily against him." That is mere guess-work; if it is admissible, you will perhaps find my inference much nearer the mark. My opinion is that Bulbus, being a worthless, infamous villain, who brought the stain of many a crime with him into court, was on this account all the more readily condemned. You select from the whole case against him the part which suits your purpose, and then say it was that which guided the jury to their decision.

XXXVI. 98.

This verdict against Bulbus therefore ought no more to be allowed to prejudice my client than the two others referred to by the prosecutor, those namely against P. Popilius and Ti. Gutta, who were impeached for corruption and prosecuted by men who had themselves been found guilty of the same offence. Now I do not believe it was because they showed clear proof that the defendants had taken bribes while serving as jurors that these men received a free pardon, but because they succeeded in satisfying the court that, having brought others to book¹ for the same misdemeanour of which they themselves had been found guilty,² they were entitled to be admitted to

¹ Mr. Nettleship translates, "having publicly shown their disapproval of," quoting a parallel use of *reprehendo* in Pro Fonteio 3 (*Journal of Philology*, vol. viii. No. 16). The word seems to mean to "rebuke by bringing to trial," to "pull up," as we might say.

² *I.e.*, *ambitus*, which does not seem to have included the taking of a bribe by a juror; hence the clause, "quos ego non idcirco . . . pecuniam accepisse." That offence came properly under the statute De Repetundis, or the Lex Cornelia de Sicariis (cp. note on 148). Quintilian (v. 10. 108) takes the restoration to civil privileges of the accusers in this suit, who had themselves been condemned for *ambitus*, as the *signum* that Popilius and Gutta were prosecuted for *ambitus*, and not for judicial corruption. In view of the want of some

the rewards offered by law. No one can therefore, I take it, doubt that there cannot possibly be any connection between their conviction for corrupt practices and the case of Cluentius now before your court.

But what of the conviction of Staienus? Gentlemen, I do not say now, though I almost think I should, that he was convicted of high treason. I do not propose to read the evidence given against him by men of the greatest distinction—men who served under the illustrious M. Æmilius as lieutenants-general, as captains, and as military tribunes. That evidence clearly proved that the mutiny which was stirred up in the army was mainly attributable to the machinations of the quæstor Staienus. I do not even propose to read the evidence given with regard to the six hundred thousand sesterces which he received on the head of the action brought by Safinius, and then quietly kept to himself, just as he did afterwards at the trial of Oppianicus. I pass over these and many other charges brought against Staienus at his trial. What I do say is that P. and L. Cominius, distinguished and eloquent members of the equestrian order, had on that occasion the same point at issue with him

connecting link between the two clauses beginning with *qui*, Mr. Nettleship proposes to substitute *quia* for the second *qui*: “*qui causam de ambitu dixerunt [non de indicio corrupto] quia accusati sunt,*” etc. (*Journal Phil. ibid.*). But the whole passage is surely one of those in which Cicero is endeavouring to “throw dust in the eyes of the jury.” There was probably some technical reason which saved Popilius and Gutta from being brought to trial under any other statute. We have the limitations of that section of the Lex Cornelia which treated of “judicial circumvention” detailed in ch. 54; and from 37. 104 (*qua lege in eo genere a senatore ratio repeti solet*) it would appear that there were similar restrictions to the operation of that part of the statute De Repetundis which seems to have dealt with corruption on the part of jurors.

101. when they were conducting his prosecution as I now have with Accius. The Cominii said, and I say too, that Staienus received money from Oppianicus to bribe the bench. Staienus alleged that he took it with the view of effecting an amicable compromise. Men laughed at his notion of a reconciliation, and at his appearing in the rôle of an honest man: it reminded them of the gilt statues he set up at the temple of Juturna, with an inscription which proclaimed that "kings had been by his means reconciled to favour." All his frauds and impositions were raked up; his whole life, so disreputably spent, was laid bare; his private necessity and his gains in the law-courts were exposed. There was something unsatisfactory about such a venal negotiator of peace and harmony;¹ and the result was that Staienus, urging the same defence as Accius does now, was found guilty, while the Cominii, taking the same line as I have taken all through the case, made good their charge. Accordingly, 102. now that we have agreed that the guilty party must either be Cluentius or else Oppianicus; if the conviction of Staienus decided that it was Oppianicus who designed to bribe the bench, and that it was Oppianicus who gave money to a juror for the purpose of buying up the votes; and if no trace can be found of any money belonging to Cluentius having been given to a juror, while money belonging to Oppianicus was recovered after the trial from a juror—can there be a doubt that the conviction of Staienus, far from making against Cluentius, strengthens in the highest degree our case and our defence?

¹ *Probabatur* has here the meaning "did not appear plausible," as also in sec. 61: "illum expertem eius consilii fuisse non probabatur." The jury did not think it likely that such a person as Staienus would have been selected to carry through the negotiations for a compromise.

It is on these grounds then that I find that the trial of Junius was of such a nature that it should in my opinion be called an insurrectionary outbreak, the lawless action of a mob, the furious onset of a tribune, rather than a judicial process. But even if any one dignifies it by that name he must nevertheless admit that the fine which it was sought to recover from Junius can have no possible connection with the case of Cluentius. My conclusion therefore is that the conviction of Junius was due to unconstitutional proceedings; those of Bulbus, Popilius, and Gutta do not compromise Cluentius, while that of Stajenus is even in his favour.

Let us see if we can bring forward any other judicial decision that is in favour of Cluentius. Was not C. Fidiculanus Falcula ¹ impeached, he who had voted for the conviction of Oppianicus, though ² he had sat only a few days on the bench as a substitute—a fact which excited a great deal of feeling against him at his trial? He was impeached, and that twice; for L. Quinctius, by the factious and violent harangues he delivered day after day, had succeeded in making him extremely unpopular. At the one trial it was proposed, just as in the case of Junius, to fine him for having served as a juror when the duty did not devolve on the decury³ to which he

¹ Cicero has elsewhere (Pro Cæcina, secs. 28, 29) committed himself to another view of this man's conduct.

² "Quum præsertim," Madvig, De Fin. ii. 25: quoted by Mayor, Cic. Phil. ii. 24. 60.

³ For the exercise of their judicial functions senators were divided into as many decuries as there were *questiones*, and one decury seems to have been annually assigned to each *questio*. When, from any reason whatever, a place or places on the bench became vacant, a *subsortitio* had to be made from another decury by the *iudex questionis*, on showing cause for so doing to the city prætor, when

belonged, and in contravention of the law. The times were a little quieter when he was impeached than they had been at the trial of Junius, but the charge and the statute under which it was preferred were nearly identical; and because there was no sedition, no violence, no disorder when he was tried, he was acquitted without any hesitation on the first hearing of the case. I do not reckon this acquittal; for even though he may not have made himself liable to the fine in question, it is still quite possible that he may have taken a bribe in his capacity of juror, just as much as Staienus, whose case was never tried under the law concerning bribery as it was not the province of the court before which he appeared to administer it. What was Fidiculanus charged with having done? With having received four hundred thousand sesterces² from Cluentius. What was his rank? He was a senator. When impeached under the statute by which senators are usually called to account in a case of this kind—I mean the statute providing for the restitution of misappropriated moneys—he was under that statute triumphantly acquitted. For the case was tried in

it was open to any one interested to make objections. In this particular case the complaint against Junius was, as we have seen (*vide* note on 91), that in impanelling Fidiculanus he had made an irregular selection, and had neglected to consult the city prætor. The phrase “*decuriæ iudicum*” is said to have originated at the period when the *Quæstiones Perpetuæ* were first established. Ten jurors seem to have been selected from each tribe, making a total of 350 liable to serve; and this formed the *Album Iudicum Selectorum*.

¹ The text is here corrupt.

² Ten times as much as Oppianicus wanted to give to each juror (sec. 87). The number is probably corrupt, but we have here a hint of the real truth. Cluentius was doubtless guilty of bribery as well as Oppianicus, and his success was probably owing to the fact that he offered more than his opponent.

the good old fashion, there was no violence, no intimidation, no risk. Every argument was stated, explained, and proved, and the court was brought to believe,¹ not only that a defendant could fairly have been found guilty by a juror who had not been present throughout the trial, but that even if the said juror had known nothing at all beyond the verdicts by which, as was agreed, the defendant had been previously compromised, he would not have been bound to listen to any further proof.²

On this the five jurors who, courting the empty applause of the ignorant, had voted for the acquittal of Oppianicus, became very unwilling to have their clemency commended. If you asked them³ if they had served as jurors at the trial of C. Fabricius, they would reply that they had. If they had been questioned as to whether he had been impeached on any other charge except of the poison said to have been procured for Habitus, they would say, "No." Had they been further asked what

XXXVIII.
105.

¹ That *adducti* is the true reading here (for "adducti ad iudicandum") is made perfectly plain from the analogous passages in De Fin. i. 5. 14 (where see Madvig's note), and Ad Att. vi. 16. 2. Similar examples of brachyology are not uncommon. Cp. De Oratore, i. 25. 115, where we have "ita dico ut . . . possit" for "ita dico ut dicam . . . posse;" and Tac. Ann. iv. 57, "plerumque permoveor num verius sit," &c.

² This seems to be a perfectly fair statement of fact. The "subsortitio" had often to be resorted to in the course of an action, and a juror so introduced into the "consilium" was evidently expected to give his vote with the rest. The odium against Falcula was due to the suspicion that either Junius, by neglecting to consult the city prætor, had failed to give the usual security against intrigue, or else that Verres had himself connived at the appointment of a venal juror.

³ For this use of the impf. subj. cp. 80, "tum si dicerem non audirer," Roby, 1532 c. Here it occurs alongside of the plpf. passive, *si essent rogati*.

their verdict was, they would have answered, "Guilty," for no one voted for acquittal. In the same way if they had been asked about Scamander, they would assuredly have given the same replies. True he was acquitted by one single vote, but none of them at the time would allow

106. it to be his. Which then of the two could more readily justify his vote, he who says he was consistent with himself and with the verdict which had been passed, or he who replies that he is lenient with the ringleader but most severe on his abettors and accomplices? However I ought not to discuss their vote, for I do not doubt that it was the shock of some sudden suspicion that made those honourable men swerve from the position they had taken up. While therefore I have no fault to find with the clemency of those who acquitted him, I commend the consistency of those who, of their own accord and not through the villany of Staienus, were guided to a decision by the verdicts that had been previously pronounced. I also praise the wisdom of those who, being utterly unable to acquit one whom they knew to be a notorious criminal and whom they had themselves condemned on two previous occasions, held the case not proven; but who, when the suspicion of such a foul proceeding had meanwhile brought grave dishonour on the bench, elected shortly afterwards¹ to condemn him when the facts had come

107. to light. And that you may not rest your opinion of their wisdom² on their conduct alone, but may be led

¹ See note on sec. 76.

² If, as the context seems to indicate, the nine names which follow are those of the jurors who said, "Not proven," the vote must have been carried by eighteen against fourteen (nine for "not proven," and five for acquittal); and it then becomes difficult to reconcile this passage with the statement in the *Pro Cæcina*, 29,

by a consideration of their personal character to approve of the justice and wisdom of what they did, can you mention any man of greater natural ability, more accomplished as a lawyer, or more scrupulous and blameless in point of honour, conscientiousness, and sense of duty, than P. Octavius Balbus? He did not vote for an acquittal. Can you mention any man of greater resolution than Q. Considius, more familiar with courts of law and with the dignity which should be found there, or more eminent for moral worth, for judgment, and for force of character? No more did he acquit him. It would take too long to speak in this way of the excellence of each of them individually; familiar as it is to all, it stands in need of no rhetorical embellishment. What a noble character was M. Juventius Pedo, one of the good old school of jurors! and L. Cauius Mergus, and M. Basilus, and C. Caudinus, whose eminence in public law-courts was in each case coincident with our country's golden days. To the same category belong L. Cassius and Cn. Heius, men whose uprightness was equalled only by their sagacity; and none among them all gave his vote for the acquittal of Oppianicus. P. Saturius also found him guilty, who, though the youngest of them, was not inferior in ability, scrupulousness, or conscientiousness to any of those whom I have already mentioned. How eminently innocent must Oppianicus have been, when he who
108.

that the issue depended on a single vote. The passage in the text is generally taken as referring to those who voted "Guilty;" but this view is not supported by the context. Probably Cicero is quoting a certain number (*longum est de singulorum virtute ita dicere*) of names from the list both of those who voted "non liquet" and of those who gave a direct verdict of guilty (*vide* *Introductio*, pp. 15, 16).

deferred judgment with caution,¹ and he who condemned him with consistency !

xxxix.

During the agitation of Quinctius which followed the trial these facts were never stated either at a public meeting or in a court of law, for he would not allow any one else to speak ; and indeed, owing to the excitement of the mob, it was impossible for any one to command a hearing. So after procuring the ruin of Junius he turned his back on the whole matter ; in a day or two he went out of office, and he became aware moreover that the general enthusiasm had cooled down. But if he had cared to impeach Fidiculanus at the same time at which he impeached Junius, Fidiculanus would never have had a chance of replying. At first indeed he kept threatening all the jurors who had voted for the conviction of Oppianicus. You knew the fellow's insolence, you knew his arrogance and his tribunician airs. Gracious Heaven ! how detested he was with his pride, his mistaken estimate of himself, and his offensive and unbearable haughtiness ! Why, he actually took it sorely to heart—and it was this that gave rise to his subsequent conduct—that Oppianicus had not been pardoned out of consideration for himself and the defence he made ! Just as if the fact that his client had betaken himself to such an advocate ought not to have been a sufficient indication that every one else had turned his back on him. Why, there was no lack of eloquent and distinguished pleaders in the capital, some one of whom would surely have undertaken the defence of a Roman knight, of high standing in his own town, if he had thought that such a desperate case as his was could be defended with credit. But as to Quinctius,

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xl. 110.

¹ *Qui distulit* = "qui non liquere dixit." By voting "Not proven" a juror virtually demanded a further hearing of the case (*ampliatio*).

what case had he ever pleaded before though he was about fifty years of age? Who had ever seen him acting, I do not say as counsel, but even as a witness to character or a general supporter? He had swooped down on the long empty rostra and the well-known spot which since the advent of L. Sulla the tribune's eloquence had forsaken,¹ and had recalled the populace, disused as they now were to public meetings, to a semblance of former custom; for which reason he was rather popular than otherwise with a certain class of men. But how heartily was he hated at a later day by those very friends of his who had helped him to climb to a still higher eminence! And with good reason; for just recall the general haughtiness of his manners, and in particular his features and mode of dress, and that gorgeous purple robe that he let fall down to his heels.² Just as if it were altogether intolerable that he should have come off second best in a lawsuit, the fellow appealed the matter from the courts of justice to the public platform. And do we actually complain, as we often do, that there is no adequate career in this country open to men of new birth? I deny it, and say that nowhere was there ever a greater. For here if any man of ignoble birth shows by his life that he can support by moral worth the dignity of nobility, he gets as far as industry and integrity can carry him; while those again who have nothing but their humble origin to rely on often gain more advancement than if with the very

111.

112.

¹ Sulla had deprived the tribunes of the power of veto, and of the "ius agendi cum populo." Cp. note on 94.

² As ædile or prætor, Quinctius would be entitled to wear the "Toga prætexta;" and with such distinctions to boast of he thought he could afford to look down on those who had cultivated him when tribune, and by whose help he had risen to a higher office.

same blemishes they had instead been men of the highest rank. To confine myself to the case of Quinctius. If he had been of noble birth, who could have put up with his insolence and his insufferable haughtiness? Because he was of humble birth men *did* put up with it, thinking that he ought to have the advantage of any good quality with which nature might have endowed him, but considering at the same time that his uppishness and arrogance were worthy of ridicule rather than of fear in one of such low origin.

- XLI. But to return. Will you, who are always quoting precedents, be good enough to tell me what in your opinion was decided on the occasion of the acquittal of Fidiculanus?
113. Surely that he got nothing for his vote. But I shall be told that he had voted guilty; that he had not heard the whole case; that he had often been virulently abused by L. Quinctius in his harangues. Well then, all those trials set on foot by Quinctius were the work of injustice, misrepresentation, disorderliness, demagogism, and faction. Granted, you say: Falcula may possibly have been innocent. This amounts to an admission that somebody voted for the conviction of Oppianicus without making any money by it; that Junius did not appoint to the vacancies on the bench such persons as would take a bribe to vote for a conviction; that it is credible that some one was uninfluenced by bribery in convicting Oppianicus without having been a member of the original jury. But if Falcula is innocent who, I ask, is guilty? If he did not get anything for convicting Oppianicus, who did? I deny that there was any charge made against any of them which was not made against Fidiculanus, or that there was any element in the case of

* Reading "iam putabitur aliqui." S. T. have "putaretur."

Fiducianus which was not also present in the others.¹ You rested your case on precedent ; and you must therefore either find fault with the verdict here, or else if you grant that it is as it should be, you must admit that the conviction of Oppianicus was not procured by bribery. And yet a sufficiently strong argument would be found in the fact that none of all those jurors was brought to trial after Falcula's acquittal. What is the good of your stringing together a list of persons found guilty of corruption, under another statute, on definite charges and abundant evidence? In the first place, those to whom you refer ought to have been prosecuted under the law which provides for the restitution of misappropriated moneys rather than for corruption ; for if this suspicion, told against them when on their trial for corruption, though the statute under which they were impeached was a different one, it would surely have done them much more harm if they had been brought up under the statute which deals specially with the offence in question. Secondly, if there was so much weight in the charge you allude to that, no matter under what statute these jurors might severally have been brought to trial, it would deal the fatal blow, how is it that with such a crowd of prosecutors, to whom such great rewards are open, the others have not also been impeached?

Here, though it ought not to be called a judicial precedent, you bring forward the fact that in the case of P. Septimius Scævola a separate charge was made on this

¹ *Aliquid* sometimes stands for *quidquam*, as here. It would be very harsh to supply *dico* out of *nego*, and to explain the clause to mean that there was an element peculiar to the case of Fiducianus, viz., his introduction into the *consilium* by a *subsortitio*, which, though in itself perfectly legal, would tend to aggravate the prejudice against him. The *idem* is much against this rendering.

116. head in assessing the amount he was to refund.¹ Since I am addressing an assembly of experts, I do not need to show at length what the prevailing practice in this matter is. The scrupulousness which is commonly brought to bear on the rest of the case has never been observed in the same degree after the defendant has been found guilty; and in assessing the amount of restitution to be made the jurors either refuse to entertain any capital charge which it may be proposed to make an element in the assessment, on the view that the man whom they have once condemned is now their enemy, or

¹ In the *litis æstimatio*, or assessment of damages, which followed on a conviction, entries might be made implying offences different from what had been directly proved against the defendant. The opposite side had cited the *litis æstimatio* in the case here referred to as having the binding force of a previous legal decision. Cicero acquiesces in the allegation that the court took Scævola's conduct at the trial of Oppianicus into account in assessing the damages when he had been found guilty of malversation (*litem eo nomine esse æstimatam*). But he shows from analogous cases that if Scævola had been brought up subsequently on a charge founded on that assessment he would in all likelihood have been acquitted; and he therefore contends that such assessments cannot have the force of precedents.

In making the assessment, the jury, he says, are disposed either to leniency, in order to avoid the appearance of further hostility towards one whom they have already made their enemy, or else to carelessness, because they imagine they are now well through with the real business of the court. Thus the assessment is not made out with the same scrupulous accuracy as is shown in the trial itself. This being so, even in cases when a graver charge (*e.g.*, *maiestas*), has been admitted into the assessment (being a different charge from that on which the defendant was originally brought to trial), a court of justice often refuses to convict a man when subsequently brought to trial on this graver charge, thus plainly showing that it does not regard such assessments as precedents.

The reading adopted by Classen from S. and T., "quibus . . . lites

else pay but careless heed to the rest of the proceedings, thinking that they have fully discharged their obligations by passing judgment on the defendant. Accordingly there are many cases where persons have been acquitted of treason, though when they were convicted of malversation a charge of treason had been made an element in the assessment; and further it is a matter of daily occurrence that after a conviction for malversation the same jury refuses to convict the very persons into whose hands it has been determined in the assessment that the

maiestatis essent æstimatæ " (where the force of the subjunctive must be brought out by some such translation as " in many cases where, as often happens, a defendant," &c.), gives an excellent sense; and there does not appear to be much point in Ramsay's objection. The orator does not go on to give what " far from being an illustration of the careless leniency of jurors, would be rather a proof of vindictive persecution." He simply says that it is well known that jurors are not as scrupulous as they might be in assessing damages, and so (*itaque*) in cases when a *lis capitis* has been admitted, a court of justice generally refuses to convict in any trial subsequently arising out of such assessments.

Scævola was found guilty on charges having nothing to do with that of taking a bribe in the capacity of juror (*aliis criminibus*), as he was reported to have done at the trial of Oppianicus. This would have been a capital charge, and it was this assessment involving his civil status (*lis hæc capitis*) that his enemies tried to get entered in the *æstimatio*. According to In Verr. i. 13, 38, he was convicted " *de pecuniis repetundis*"—*i. e.*, for extortion; and Cicero says that if the *lis capitis* had had the binding force of a judicial precedent he would afterwards have been brought to trial under the *Lex Cornelia de Sicariis* (*hac lege ipsa*).

" For the *litis æstimatio* cp. Ps. Asconius on Verr. Act. i. 39, *qui ambo peculatus damnati sunt*. Quid hoc, inquiet quispiam, ad iudicium corruptum pertinet? Respondebimus, *litis æstimationem* [feri] non solum ex titulo propositi criminis, sed etiam ex aliis probationibus, quæ ex ante actis rebus apud iudices constiterint. Hi, *peculatus crimine* proposito, etiam quas iudicando pecunias ceperant reddiderunt."—H. N.

misappropriated money found its way. Now by such occurrences precedents are not annulled; they only establish the point that an assessment is not a precedent. Scævola was found guilty on distinct charges, supported by abundant evidence from Apulia. Every exertion was made to have this capital charge entered as an element in assessing the amount he was to refund; and if this assessment had had the weight of a legal precedent, he would afterwards have been brought to trial under this very statute either by the same or by other enemies.

XLII. 117.

Next comes what the other side call a precedent, but what our forefathers never dignified by that name, and never respected as a previous decision; I mean the stigma officially affixed by the censors. But before proceeding to discuss this subject I must say a word or two about my own personal relations, in order that you may see that the danger in which he stands has not kept me from remembering what is due to the relations in which friendship has placed me to others as well as to my client.¹ I am a personal friend of both the worthy gentlemen who last filled the censorship: with one of them, as most of you know, I am on terms of familiar intercourse and of the closest intimacy—an intimacy cemented by mutual good offices. Accordingly in saying what I may have to say with reference to their vote of censure, I shall speak with the wish that all my words be taken as referring not to the action of these gentlemen, but to the censorial system in general; and I shall easily prevail on my good friend Lentulus—of whom I would

118.

¹ On either reading, "cum huiusce periculo ceterorum quoque," and "cum huiusce periculi tum ceterorum quoque," the meaning is the same; *periculum* referring to the danger of conviction, just as *salus* frequently denotes deliverance from that danger, or acquittal.

speak with the respect due to his eminent personal worth, and to the high distinctions which he has obtained at the hands of his fellow-countrymen—to permit me to draw on that store of honour and painstaking care, of moral courage and freedom of speech, which he is wont to bring to bear in defending friends on trial, for just as much as I cannot forego without endangering my client's case. I shall however speak throughout with all due caution and circumspection, so that no one may think I have forgotten what is in honour due to the defendant on the one hand, or that on the other I have either derogated from the dignity of any public officer, or have broken any tie of private friendship.

I find then, gentlemen, that the censors stigmatised certain members of the jury which Junius directed, assigning the facts alleged as their reason for so doing. Now I shall first advance the general statement that our countrymen have never so readily acquiesced in the censor's stigma as in the verdict of a court of law; and without wasting time on what is notorious I shall quote one single case by way of example. C. Geta, after being expelled from the senate by the censors L. Metellus and Cn. Domitius, was himself at a later date elected to the censorship; so that one of whose morals the censors had expressed their disapprobation was afterwards set over the morals of his fellow-citizens in general and also of the very men by whom he had been censured. Now if the censorial stigma were accounted a judicial precedent, men who have been branded with it would be debarred alike from offices of state and from restoration to the senate, just as those found guilty of a charge involving civil infamy are for ever deprived of all preferment and official rank. The fact is however that while

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no man whose conviction has been procured—say for theft by a freedman of Cn. Lentulus or of L. Gellius—will ever in any degree recover the reputation he forfeited with the loss of rank, those whom the two censors L. Gellius and Cn. Lentulus themselves, men of the greatest distinction and intelligence, stigmatised as guilty of theft and embezzlement, not only returned to the senate but were even acquitted on being tried for the offence laid to their charge. Our forefathers would not allow any one to act as an arbitrator even in the most insignificant pecuniary suit, not to speak of an action involving a man's personal reputation, unless he had been agreed on by the two contending parties. Accordingly in all statutes containing an enumeration of the reasons which disqualify either from filling a magistracy, or from being chosen as a juror, or from undertaking a prosecution, this censorial stigma was omitted; for while they wished these magistrates to be a terror to evil-doers, they did not mean them to have the power of inflicting life-long punishment. I shall therefore prove that the censor's mark of reprobation has frequently been cancelled not only by the votes of the Roman people, as I have already shown you, but also by the verdicts of men who, being on their oath, were bound to be more scrupulously conscientious in giving their decision. In the first place, in many cases where defendants had been branded for receiving money illegally, juries consisting of Roman senators and knights have before now preferred to be guided by their own consciences rather than by the impressions of censors. Secondly, the city prætors, who are bound by their oath of office to register in the select list of jurors only such as bear the highest character, have never been of opinion that the censorial stigma

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121.

ought to debar them from doing so in any case. And 122.
 lastly, the censors themselves have frequently departed
 from the precedents, if you will call them precedents, of
 former censors. Nay, even colleagues in the censorship
 think so little of each other's decisions that the one will
 not only find fault with but will even annul the other's :
 the one wishing to expel a man from the senate, the
 other keeping him where he is, and deeming him worthy
 of the most exalted rank ; the one proposing to dis-
 franchise a citizen or to remove him from his tribe, the
 other vetoing the proposal. How then can you enter-
 tain the idea of calling the censorial stigma a precedent
 when you see it cancelled by the people, rejected by
 jurors on their oath, ignored by magistrates, reversed by
 those who have obtained the same office, and made the
 subject of wrangling even between colleagues ?

This being so, let us see what it is that the censors are 123.
 said to have decided with reference to the corrupt prac-
 tices at the trial of Oppianicus. And first let us deter-
 mine whether the thing is true because they affixed their
 note, or whether they affixed their note because the
 thing was true. If their official note makes it true, look
 to what you are about, or you will find that you are
 handing over to the censors for the future despotic
 authority over every individual among us ; that the
 censorial stigma can bring quite as much disaster on our
 country as all the horrors of proscription ; that we shall
 hereafter have to stand in as much dread of the censor's
 pen, to blunt whose point our ancestors devised so many
 expedients, as of a dictator's.¹ But if on the other hand 124.
 it is the truth of the note affixed that ought to give its

¹ *I. e.*, the pen with which the dictator made out the lists of the proscribed. Some, however read *gladium*.

weight, let us ask whether it be true or false. Set aside the authority of the censor's official declaration ; away with what is extraneous to the case. Prove what money Cluentius gave, from what source and in what manner he gave it—point, I say, to a single vestige of bribery originating with Cluentius ; next show that Oppianicus was an honourable and upright man, that no one ever thought him anything but what he should be, and lastly, that his case was unprejudiced by any previous verdict. Then, but not till then, you may make as much as you please of the censors' official deliverance, and maintain that their decision bears on the issue before us. But so long as it is agreed that in Oppianicus we have a man who was found to have falsified with his own hand the official register of the town to which he belonged, who made erasures in a will, who by fraudulent substitution procured the formal witnessing of a forged will, who killed the man in whose name it was signed and sealed, who murdered his own son's uncle while in the bonds of slavery, who effected the proscription and assassination of his fellow-townsmen, who took to wife the widow of one of his victims, who gave a bribe to procure a miscarriage, who murdered his mother-in-law, his wives, and who did to death at one and the same time his brother's wife together with her expected offspring, as also his brother himself, and then finished up with his own children ; who was openly detected in the design of poisoning his step-son, and who when brought to trial, after his agents and accomplices had been found guilty, bribed a juror to buy the votes of his colleagues ;—so long, I repeat, as these facts are agreed on concerning Oppianicus, while there is no evidence to fasten any charge of corruption on Cluentius, what ground. have you for

thinking that the censorial stigma, whether it was the result of deliberate judgment or merely an ill-considered impression, can either help your case or prove fatal to my guiltless client?

What then was it that guided the censors? They will not even themselves say, to put the case as strongly as possible, that it was anything more than common talk and report. They will not assert that any evidence, whether oral or documentary, or any weighty proof whatever, had put them in possession of certain information, nor in fact that they had made any investigation of the facts at all before they came to their decision. And even had this been the case their decision would not necessarily be so immovable as to be incapable of being overthrown. I shall not make use of the great available wealth of instances, nor shall I adduce a case of ancient date, or any powerful and influential personage. Quite lately, on advocating before the prætors, M. Junius and Q. Publicius, and the curule ædiles, M. Plætorius and C. Flaminius, the claim of D. Matrinus, who fills the humble office of a clerk to the ædiles, I persuaded them on their oath to choose as clerk one whom the censors actually notified that they had disfranchised; for there being no fault to find with the man, they held that what they had to consider was not what judgment had been given affecting him, but what he really deserved. Now as to what they notified with reference to the corruption at the trial of Oppianicus, how can any one believe that they came to their decision after a sufficient and careful consideration of the facts? I find that they affixed a note against the names of M. Aquilius and of Ti. Gutta. Does this mean that two only had been bribed? If this is what they say it is plain that the

11.V. 126.

127.

others got nothing for voting "guilty." It follows then that Oppianicus was not ruined and undone by bribery, and that those who convicted him are not all, as Quinctius would have it in those harangues of his, to be considered guilty and looked on with suspicion. I find that the official declaration of the censors adjudged two men, and two only, to be implicated in that infamous proceeding. If it is not so, let them allege that they have made out with regard to the others something which they ascertained with regard to these two.¹

XLVI. 128.

For it is altogether impossible to acquiesce in the notion that the censors transferred a precedent from the usage of the army to their official notification of disapproval. Our ancestors established the rule that, in the event of the commission of a heinous breach of military discipline on the part of many, punishment should be inflicted on a certain number drawn by lot; ² thereby securing that while the fear of punishment was to extend to

¹ Unless the infinitive *comperisse* is to be explained by attraction (Roby, 1784), the emendation *sese* for *esse* is as indispensable as the insertion of *non* before *comperisse* is superfluous. For a similar harshness of construction, cp. I In Verr. ix. 25. *Afferant* naturally refers to the censors, who are challenged to prove that the offence for which they had branded two of the jurors had been shared in by (a majority of) the rest; in which case alone could their declaration be cited in proof that the conviction of Oppianicus had been procured by bribery. If they cannot do so, the inference will be that the rest of the jury were innocent. If *afferant* could refer to the prosecution, the true reading might be *eos*: "let the other side allege that they (the censors) made out the guilt of the others as well, but only proceeded against the two."

² Generally one in ten (*decimatio*)—as by Appian Claudius in the Volscian war, B.C. 495; and by Apronius in the war against Tacfarinas (Tac. Ann. iii. 21). Sometimes one was chosen in every twenty (*vicesimatio*), or one in every hundred (*centesimatio*).

all the punishment itself should overtake only a few. But how could it become the censors to do likewise in choosing men to fill high rank,² in passing judgment on their fellow-citizens, and in reproving them for their transgressions? The soldier who, quailing before the furious onset of the foe, has deserted his post, may afterwards prove a better soldier, a good man, a useful citizen; and so, when a man had flinched in battle through fear of the enemy,² our ancestors, while holding up to him the fear of capital punishment in all its terrors, introduced this drawing of lots in order that an excessive number should not undergo the punishment of death. But will you do likewise in making appointments to the senate? If several men have been guilty of taking a bribe to convict

129.

¹ *I.e.*, in the election of senators.

² *Qui . . . deliquerat* is the reading of S.T., first restored by Classen, and seems to give the sense imperatively required by the whole passage. "For a soldier who *has deserted* his post" (*tenuit*, perfect) . . . "may be afterwards, nevertheless, a better soldier, &c. Therefore if a man *had behaved badly* in war from fear of the enemy, our forefathers held before him a *greater fear*—that, namely, of punishment and death," &c. The point of the passage is that the decimation takes place after the act of cowardice, in order to punish a few by death, and the majority *by the terror of death*; *amplior metus* being the agony of fear endured by the soldiers while waiting to see on whom the lot will fall. This fear, and the sight of their comrades' punishment, will act both as a punishment for the past and a deterrent for the future. But (he says) there is no real analogy between the soldier who has once shown the white feather and the jurymen who has once given a corrupt verdict: the one may retrieve his fault, the other is so tainted as to be unfit for public life.—H. N.

On the other reading (*ne . . . delinqueret*), *tenuit* and *pertinuit* must be taken as aorists. "He who fights and runs away may live to fight another day;" but to deter him from such unworthy conduct a "comprehensive" fear of death was ever before his eyes, though as a matter of fact punishment was inflicted only on a few.

an innocent man, will you, instead of punishing them all alike, pick and choose at your own discretion, and select as by lot a few out of many for official censure? Shall then any one who to procure the ruin of a guiltless man has bartered for money his honour and his conscience, take his place uncensured, with your knowledge and connivance, in the senate-house as a senator, among the Roman people as a juror, in the state as a citizen? Shall not he who for gain has robbed an unoffending fellow-citizen of fatherland, of fortune, and of children, be branded with the stigma of the censor's inflexible reprobation? Are you the controller of our morals, are you the high priest of this long-established and rigorous system, if you either knowingly retain in the senate any man on whom is the pollution of so great a crime, or rule that there is nothing in the fitness of things to require that like offences shall be visited with a like punishment? Or will you hold up to unprincipled senators in time of peace the same method of punishment which our ancestors ordained should be set before cowardly soldiers in time of war? No. If it was right to transfer this precedent from the usage of war to the censorial reprobation, the lot ought also to have gone with it; but if on the contrary it is quite out of keeping with the character of the censor's office to punish according to lot and so to entrust to the arbitrament of chance the offences of individual members of society, then surely it is not right that where many are guilty a few only should be capriciously selected for official censure.

XLVII. 130

But we all know that the notifications in question were made for the sake of catching, as it were, the breeze of popular favour. The matter had been canvassed at public meetings, and the mob without investigating the

facts had accepted one statement of the case ; no one was permitted to say anything on the other side, and indeed no one felt any concern about maintaining the opposite view. Further the jury courts, as they were then composed, had incurred great unpopularity. Only a few months after the trial they had been the scene of another grave scandal—the marked voting-tablets ;¹ and it was thought that this blot on our judicial procedure could not possibly be overlooked or ignored by the censors. They wished to brand by their official stigma men who, as they saw, were already notorious for their other vices and for infamy of every kind, and all the more because at this very date, during their term of office, the jury-courts had been thrown open to the equestrian order ; their motive being a desire to pose as those who had officially censured the courts by the degradation they inflicted on such as deserved it. But if I or some one else had had an opportunity of pleading this case before those very censors, I should certainly have satisfied men of their well-known intelligence ; for the facts show that they were not in possession of any sure or certain information, and that the whole affair of their official censure was only a bid for popular favour and applause. L. Gellius alleged as his reason for censuring P. Popilius, who had voted for the conviction of Oppianicus, that he had taken a bribe to convict an innocent man. Now just think what a gift of second-sight is implied in knowing the innocence of a defendant on whom perhaps he had

131.

¹ In B.C. 75, when the iudicia were still in the hands of the senate, Cicero's rival, Hortensius, had, at the trial of his kinsman Terentius Varro, distributed among the bribed jurors voting-tablets privately marked, so that he might know whether they had kept their pledge (in *Cæcil.* vii. 24 ; In *Verr.* i. 13, 40).

- never set eyes, though men of the greatest sagacity, after hearing the case as jurors, brought in a verdict of "not proven," to say nothing of those who voted "guilty."
132. But be it so. Gellius censures Popilius; he finds him guilty of having taken a bribe from Cluentius. This Lentulus denies; for though he refuses to admit Popilius to the senate because he was a freedman's son, he leaves him his senator's seat at the games and frees him from all ignominy. And by so doing he pronounces that Popilius was not bribed to vote as he did in condemnation of Oppianicus. Again in giving evidence on a subsequent occasion at a trial for corruption, Lentulus delivers a very warm eulogy of Popilius. Accordingly if Lentulus did not abide by the decision of Gellius, while Gellius on his part did not acquiesce in the judgment of Lentulus—if neither of the two censors saw any necessity for abiding by the opinion of his colleague—is there any reason why any of us should think that their official stigma ought in all cases to be immutable and valid for all time?
- XLVIII. 133. But you will tell me they censured Habitus himself. Yes, but not for anything discreditable, nor for any blunder—not to say blemish—in his whole life; for indeed no man could possibly be more blameless or more upright than the defendant, nor more conscientious in the observance of every obligation. This the censors do not gainsay. They too were influenced by the rumour of bribery at the trial. Their own personal opinion of my client's honour, uprightness, and goodness is all that we could wish; but they thought it was impossible for them to overlook the prosecutor after having censured the jury. With regard to this matter I shall merely, without saying anything further, adduce one single incident from the whole range of antiquity. I do not think
- 134.

I should pass over the example of the great and illustrious P. Africanus,¹ who, when C. Licinius Sacerdos came forward at the review of the knights in his censorship, said, in a tone loud enough to let the whole assembly hear, that he knew for a fact that Lentulus had solemnly and publicly perjured himself, and that if any one cared to come forward and accuse him he could avail himself of his evidence; and then, when no one did so, bade him pass on with his horse. He in whose judgment his own countrymen and foreign nations were alike wont to acquiesce did not consider his own private knowledge a sufficient ground for inflicting ignominy on a fellow-citizen. And if Habitus had had the same opportunity² he could easily have held his own, even in the judgment of the censors themselves, against groundless suspicion, as well as against the odium that the arts of a demagogue had stirred up.

One point still remains which disquiets me more than anything else, and to which I scarcely think I am able to reply. You read out a clause from the will of Cn. Egnatius, senior—obviously a man of the highest respectability and intelligence—where he says that he has disinherited his son on the ground that he had taken a bribe to secure the conviction of Oppianicus. Of this man's want of character and principle I shall not speak at any length: all I say is that, in the unnatural will you quote, its author, while disinheriting the son he hated, appoints as joint-heirs with the son he loved men who

¹ The younger, censor in B.C. 142.

² *Facere* is awkward: it must mean, "if he had been accorded the privilege of defending himself." It would be quite out of place on the explanation of Manutius: "if he *had been treated as Sacerdos* was, and had not been censured when there was no evidence forthcoming against him."

were in no way connected with him. You, Accius, will, if you take my advice, carefully consider whether you wish the deliverance of the censors to carry weight with it or that of Egnatius. If that of Egnatius, you make of no account the censor's official notification in the other cases; for Cn. Egnatius himself, whose authority you wish to have weight, was by them expelled from the senate. But if that of the censors, this Egnatius, whom his father disinherited with a censor-like notification of the why and wherefore,¹ was retained in the senate by them though they expelled his father.

XLIX. 136.

But you will tell me the senate decided unanimously that there had been bribery at the trial. How so? "It took up the case." Could it have refused to deal with so serious a matter when it was brought before it? When a tribune of the people had by popular agitation all but made the question one of fisticuffs, when it was being said that the ruin of a most excellent and altogether guiltless man had been compassed by bribery, when the senatorial order was in a perfect blaze of unpopularity, was it possible to refrain from coming to some resolution? Could the excited passions of the populace have been set aside without the gravest national risk? But what was the resolution come to? Mark its justice, its wisdom, its wariness. "If there are any by whose agency a public court of justice has been bribed." Does it look as if the senate is deciding that this offence had been committed, or is expressing its vexation and annoyance in the event of its having been committed? Why, if A. Cluentius himself were asked what he thought of the jury-courts he would give the same opinion as did those

¹ *Censoria subscriptione* refers to the words quoted above from the will: "quod is ob Oppianici condemnationem pecuniam accepisset."

whose votes, as you make out, condemned him. But I ask you if L. Lucullus, a man of the highest intelligence, proposed during his consulship a law in terms of the resolution of the senate to which you refer, or if this was done a year later by M. Lucullus and C. Cassius, to whom, as being at the time consuls-elect, the senate had assigned the same duty? They did not. What you allege to have been effected by the money of Habitus, without adducing the faintest shadow of suspicion in proof of your assertion, was due in the first place to the fairness and sagacity they displayed in their consulship: they thought that¹ they need not afterwards submit to the people a decree which the senate had passed for the sake of quenching the flames of a momentary prejudice. Secondly, the very people of Rome who had formerly been wrought on by the unreal complainings of L. Quinctius to clamour for the introduction of the bill, affected by the tears of the little son of C. Junius, ran together with great uproar to disown the whole inquiry and the intended law; a fact which made us appreciate the truth of the common saying that as the sea, though naturally calm, is ruffled and tost about by the violence of the winds, in like manner the people of Rome is peaceful if left to itself, but may be stirred up by the talk of agitators as by storms of the greatest fury.

There still remains a very weighty testimony which to my shame I had nearly passed over. It is said to be my own. Accius read out of some speech or other, which he said was one of mine, a passage² in which the

¹ "Ut id. . . arbitrentur" seems to be epexegetical of (id) "factum est," unless indeed a double construction is purposely intended.

² Probably the thirteenth chapter of the First Action against Verres.

2 jury is charged to bring in a fair verdict, and reference is made, among other trials which had not given satisfaction, to this very one before Junius. Just as if I did not state immediately on beginning this defence that the trial in question had been unpopular, or as if in speaking of the bad repute of the law-courts I could have omitted what at the time was so generally canvassed! But even 139. if I *did* say anything of the kind, I was not speaking from personal knowledge nor as in the witness-box; my words were the outcome of the circumstances in which I found myself rather than the authoritative expression of any deliberate opinion of my own. I was conducting the prosecution,¹ and accordingly I set myself at once to work upon the feelings alike of the people generally and of the jurors; and while I was adducing, not from my own belief, but only from what people said, instances in which our courts of justice had given dissatisfaction, I could not have omitted the case of which you speak, as it had been made the subject of such general discussion. But it would be a great mistake for any one to imagine that he possesses in the speeches which we orators have delivered before courts of law, an authentic record of our own convictions. They all concern particular cases and emergencies, and do not pledge the individual advocates themselves. For if law-suits could plead their own case no one would call in an advocate. As it is we are called in to set forth, not what is to be established by our authoritative deliverance, but what can be deduced from the bare facts of a case itself. 140. It is related that the gifted M. Antonius was wont to say that the reason why he had never put any of his speeches in writing was that he might be able to repudiate anything that might at any

¹ *I.e.*, the impeachment of Verres.

time have been said inappropriately. Just as if unless we commit to writing whatever we may have said or done it will not be preserved in the memories of men! For myself, I am more willing to follow in this matter LI the weighty example, among many others, of the eloquent and sagacious L. Crassus. In opposing the bill that was brought in against sending a colony to Narbo he had done his best to disparage the authority of the senate, while in supporting the Servilian law he had praised that body to the skies;† and so when counsel for Cn. Plancus, who was impeached by M. Brutus, a vigorous and ingenious speaker, he is said to have been considerably roused when Brutus put up two readers and got them to read turn about chapters out of those two speeches exactly contradicting each other, and further, with the view of inflaming against Crassus the minds of the jurors of that time, to read aloud from the latter of the two several passages in which the equestrian order was pretty roughly handled. Crassus accordingly com- 141 menced his reply by setting forth the conditions of the two several occasions, in order to show that his words had been chosen to suit the circumstances of either case; and then, by way of letting Brutus know what sort of

† The senate opposed a proposal, made by Crassus in B.C. 118, to lead a colony to Narbo, the capital of what became Gallia Narbonensis; but Crassus bore down their opposition, and led forth the colony himself. Many years afterwards, in 106, he supported the bill introduced by Q. Servilius Cæpio to associate the members of the senate with the equites in the privilege of serving as jurors, which had belonged exclusively to the latter since the legislation of C. Gracchus. At the time of the incidents narrated in the text the equites again possessed a monopoly of the privilege (*illorum iudicium*): so that the quotations in praise of the senate would not be listened to in a friendly spirit.

man he had provoked—with what a gift not only of eloquence but also of wit and sarcasm—he retaliated by setting up three readers, each with a different treatise on civil law which “the Prosecutor’s” father, M. Brutus, had left behind him. On their reading the opening words of these treatises, with which I imagine you are familiar—“It fell out that we were in the country together at our place at Privernum, my son Brutus and I”—he asked him what he had to show for that property. “We were at our Alban villa, my son Brutus and I:” he asked what had become of the Alban villa. “When we happened to be sojourning at our place at Tiber, my son Brutus and I:” he asked where it was now, saying that the shrewd Brutus, seeing the prodigality of his son, had been desirous of leaving a record of the estates he was bequeathing to him. “And if he could have said with propriety that he had been at his baths along with a son of that age, he would not have omitted to mention it:” but he, Crassus, would not quote the father’s writings, but would go to his account-books and the censor’s register to ask his son what had become of those baths. On that occasion Crassus avenged himself on Brutus in such a way as to make him regret what he had read aloud. It may be indeed that he had been really annoyed at being censured for what he had said in speaking on politics, where consistency is perhaps more indispensable.

142. But in my case I am not annoyed at the quotations from my speeches; they were quite appropriate to the existing circumstances and to the case which was then being tried, and I did not incur any responsibility by speaking as I did that should hinder me from honourably and unrestrictedly defending the present action. And even if I should choose to confess that while I am now acquainted

with the merits of the case of A. Cluentius, I shared previously the popular prejudice of which I have spoken, who, I ask, could find fault with me? Especially since you on your part, gentlemen, must by every rule of justice grant me the request which I made in beginning, and which I repeat now, namely, that if you have brought with you into this court any unfavourable impression about the trial in question, you will rid yourselves of it when you have come thoroughly to understand the case and to know the whole truth concerning it.

Now since I have replied to all you said, T. Accius, concerning the conviction of Oppianicus, you must confess that you were much mistaken in thinking that I meant to make a technical and not an actual defence of A. Cluentius. You stated more than once that you had information that in defending this action I intended to avail myself of the protection afforded by the letter of the law.¹ Do you really say so? Are we to infer that we are betrayed by our friends, and know it not? Is there some one or other among our fancied friends who reports our tactics to the opposite side? Who was it that gave you this information? Who can have been so unconscionable? To whom did I mention it? My belief is that no one is to blame; the statute itself must doubtless have been your informant in the matter. But think you that in speaking for the defence I have made any reference at all throughout the case to the statute, or that I have defended this action differently from what I would have done if Cluentius had been

LII. 143.

¹ In strictness, that part of the *Lex Cornelia de Sicariis* which related to "judicial circumvention" did not apply to Cluentius, as he was neither a senator nor one who had held one of the higher magistracies. *Vide* *Introd.* p. 24.

144. amenable to it? Assuredly, so far as it becomes a man to speak catagorically,¹ I have omitted no opportunity of disposing of the calumnious accusation made against my client. What then is my motive? Some one perchance will ask whether I disapprove of employing the protection of the laws to ward off the danger of a capital conviction? No, gentlemen, I do not, but I am observing the rule I have laid down for my guidance. In appearing for a man of reputation and intelligence I do not confine myself to following my own counsel, but am also in the habit of allowing myself to be greatly influenced by the advice and inclinations of my client. I ought to be familiar with the laws to interpret which we lawyers are called in, and in which our occupation consists; and when this case was put into my hands I told *Habitus* at once that the clause which says, "Whosoever shall have conspired to procure a verdict of guilty," did not affect him, but applied to the order to which we senators belong. On this he began to entreat me earnestly not to rest his defence on the letter of the statute. I told him what I thought, but he won me over to his opinion, declaring with tears in his eyes that he was as anxious to preserve his reputation as to retain his civil rights.
145. Though I complied with his wishes, my reason for doing so—for indeed we ought not always to act as I did—was that I saw the case could be most abundantly defended on its own merits, apart altogether from the statute. I saw that the line of defence which I have been following would be more dignified, while the other, which my client did not permit me to adopt, would be less troublesome. But if our object had been merely to make good

¹ *Ut hominem confirmare oportet* must have the same meaning as "*quod timide dicam*" in a similar context, xix. 52.

our case¹ I should have concluded my speech after merely quoting the terms of the law.

Nor am I disturbed by the plea which Accius urged, LIII.
 that it is a foul shame that in cases of judicial circum-
 vention the guilty party, if a senator, should be amenable
 to the laws, but if a Roman knight, should not be so
 amenable. We shall look into the point presently; but 146.
 even were I to admit that it is a shame, you on your
 part must admit that it is a much greater shame that in
 a state whose existence depends upon its laws those laws
 should be departed from. For they are the bond which
 secures to us the honourable rank we hold in the com-
 monwealth; they are the groundwork of freedom and
 the fountain-head of justice. The mind, the heart, the
 brain, the thought of a state are centred in its laws; with-
 out law it can make no more use of its parts than our
 bodies can of their nerves, their blood, their limbs, with-
 out mind. Magistrates are the ministers of the laws,
jurors are their interpreters; in a word, we are all in sub-
jection to the laws to the end that we may be free. 147. For
 what purpose are you, Q. Naso,² seated on that tribunal?

¹ In support of his theory that Cluentius was *not* accused under the sixth section of the Cornelian Law (*vide* Introd.), Dr. Bardt contends that "*causam obtinere*" is here purposely chosen as a much more general expression than "*litē obtinere*" (*Pro Rosc. Com. iv. 10*), and that the technical word *absolvere* is avoided throughout with reference to the bribery scandal (contrast its use in 158). He compares *Ad Att. vii. 24*, "Pompeius malas causas semper obtinuit, in optima concidit;" also *Livy 39, 3*; and the general expression, "obtinere quod dicimus," *2 Verr. iii. 71, 168*. The phrase occurs again, *sec. 156*.

² His full name seems to have been Q. Voconius Naso. Mr. Long is of opinion that he is not identical with the Q. Voconius mentioned below as the *iudex quæstionis* (148), but is the *prætor veneficii* himself. It seems however very improbable that both would have been present in court together.

What constraining force is it by which you control the members of this most honourable court? And you, gentlemen, to what end are you, so few in number, selected from such a host of your fellow-citizens to determine by your votes the fate of individuals? By what right did Accius speak as he pleased? Why am I allowed to address you at such length? What business have these clerks, these lictors, and the other officers of this court whom I see before me? I imagine all this is done by law, and that everything in this trial is, as I have said above, regulated and directed by law, as it were by a mental faculty.¹ Well then, is this the only court of inquiry that is so controlled? What of that under M. Plætorius and C. Flaminius for cases of assassination?² What of that under C. Orchivius for embezzlement³ of public moneys? What of that in which I myself hear charges of malversation? What of that under C. Aquilius, before whom an action for corruption is even now proceeding? What of the other courts of inquiry? Look round on all the departments of state administration, and you will find that everything is done by the mandate and the direction of the laws. If any

148. one were to take it into his head to impeach you in my

¹ *Lege* used to be read for *legis*; but the meaning is in both cases nearly the same. *Mente quadam legis* cannot mean "the mind of law"—i.e., that which is to law what the mind is to the body, law being itself the directive principle—but "a kind of mind, viz., law," *legis* being a genitive of definition.

² So many were the cases that came before the *questio intersicarios* that two prætors seem to have presided together in that court.

³ *Peculatus* was the general term for the offence with which the Prætor Orchivius had to deal, the case of Faustus Sulla (de pecuniis residuis—ch. xxxiv. 94) forming a special department.

court, T. Accius, you would loudly protest that the statute of malversation does not apply to you ; nor would this objection of yours be an admission of embezzlement, but merely a way of avoiding an inconvenience and a risk to which the law does not expose you.¹

Now consider the issue involved and the point of law you are setting up. The statute in accordance with which this court of inquiry was established² directs the President of the Court, that is Q. Voconius, in conjunction with such jurors as may have been allotted to him—this applies to you, gentlemen—to investigate charges of poisoning. Against whom? Against everybody without distinction: “whosoever shall have prepared it, sold it, bought it, had it in his possession, or administered it.” LIV.

¹ The Crimen Repetundarum (pecuniarum) was originally a charge of extortion, with a claim for restitution in name of damages, preferred against a provincial governor ; and it was afterwards extended to all acts of malversation. It also appears to have been made to include the taking of a bribe by a iudex (pecunia ob rem iudicandam capta) : at least such a clause appears in the Lex Julia Repetundarum, which probably followed the Lex Cornelia, in which a Lex Servilia is said to have been incorporated (Pro Rabir. Post. ch. iv.). If Accius could plead that he had never held any office nor discharged any duty that could make him liable to the terms of the statute (cf. note on sec. 98 ad fin), he could of course refuse to take his trial.

² *I.e.*, the Lex Cornelia de Sicariis et Veneficis, which dealt with charges of assassination and poisoning, and also with the crime of procuring a judicial conviction by unjust means. The peculiarity of the statute was that, while any one could be brought to trial under the former heads, those only who had held high state office, or who were members of the senate (*i.e.*, all members of the senate, official and unofficial), were liable to impeachment under the latter. Accordingly Cicero contends that, if he were allowed to rest the defence on the letter of the law, Cluentius, as a Roman *eques*, could plead that it did not apply to him.

Read on and tell us what this same statute proceeds at once to add. "And he shall investigate a capital charge brought against him"—whom? Him who shall have conspired or combined? No. What then? Read on: "Who being a military tribune in the four first legions,¹ or a quæstor, or tribune of the people" (all the magistrates are named in order), "or who has or shall have given his vote as a senator"—well, what about them? "Whoever of these has or shall have conspired, has or shall have combined, to procure any man's conviction at a public trial." "Whoever of these." Of whom? Obviously of those mentioned in what went before. The difference between the two formulas, though indeed it is quite manifest, is shown by the very terms of the statute. For where it makes itself binding on all mankind it runs thus: "Whoever has or shall have prepared a mischievous drug," thus making all persons—men, women, children, and slaves—alike liable to prosecution. If it had wished to treat conspiracy in the same way it would have added, "or whoever shall have conspired;" but as it is the words are, "And he shall investigate a capital charge brought against him who may have filled a magistracy or given his vote as a senator: whoever of these has or shall have conspired." Does Cluentius come under this head? Assuredly not. Under what head then does he come? No matter: he would not allow his defence to rest on the letter of the law.² Accordingly, I bow to his

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¹ There were four first legions, five second, and five third. The twenty-four tribunes of the four first legions evidently ranked before the others; they are here classed among the *magistratus*.

² Reading with B. and K., "qui . . . tamen noluit;" *i.e.*, in spite of the advantages of the technical defence open to him, Cluentius refused to avail himself of it.

decision and throw the law overboard; but to you, Accius, I shall make a brief reply, quite apart from the case of my client. For there is in this case an element which Cluentius considers personal to himself, and there is something else which I conceive personally to affect me. He thinks it of importance to him that his defence should rest on the circumstances of the case, and on the actual facts, not on the letter of the law: and I conceive it to be of importance to me that I should not seem to have been worsted by Accius in any discussion whatever. For this is not the only case in which I have to appear: my services are at the disposal of all who can content themselves with my abilities as an advocate, and I am unwilling that any one here present should imagine that by silence I consent to the arguments which Accius urged concerning the law. I therefore comply with your wishes, Cluentius, in what concerns you: I neither read the law nor do I speak in what follows on your behalf. But I shall not forbear to say what I conceive is looked for at my hands.

You think it unfair, Accius, that the same laws should not be binding upon all. In the first place, even were I to admit that it *is* extremely unfair, it only amounts to this, that we require a thorough change in the laws you refer to, not that we may refuse to obey such as are actually in force. Secondly, did ever any senator decline to acknowledge the propriety of submitting himself to a greater degree of legal restraint, after having gained by

* Reading with B. and K., "hoc recusavit . . . putaret . . . uti oportere. But the common reading (*accusavi ut*) though harsh, seems quite defensible: *hoc* would naturally have been expanded into "ut durioribus conditionibus uteretur," for which, after the dependent clause, the orator substitutes, "ut se putaret uti oportere." There is no MS. authority for *non* before *oportere*, and *ut* cannot be taken

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the favour of his countrymen a higher stage in the ladder of official preferment? Of how many benefits are we not deprived, how many troubles and difficulties have we not to undergo! And the only advantages to counterbalance it all are honour and distinction. Just apply the same conditions of life to the equestrian order and to the other classes of the state, and you will find they will not endure them; for they think that those who either have failed to attain to the highest civil advancement, or else have made no attempt to do so, ought not to be exposed to so many pitfalls in the way of statutory liabilities and of judicial processes. Not to mention any of the other laws which, though binding upon us, do not apply to the other classes, this very statute "to provide against judicial circumvention" was carried by C. Gracchus,¹ and was carried on behalf of the commons, not to their prejudice. At a later date L. Sulla, who was anything but a friend to the rights of the people, did not dare—though by this very statute under which you are at this time exercising your functions as jurors he was appointing a special court to deal with the offence in question—to saddle with a new department of judicial inquiry a community who had up to this time been beyond its operation. But had he thought it possible, the well-known hatred which he bore the equestrian order would have made him only too glad to concentrate in this one court all the proscriptive rigour with which he visited the

for *ut qui*, the clause which it introduces being added as the explanation of the pronoun *hoc*. *Eo* 'is of course in construction with *durioribus*, "more stringent in proportion to his elevation."

¹ This law of C. Gracchus must have been passed before he effected the transfer of the jury-courts from the senate to the equites, so that it would operate against the former in favour of the lower orders. It was ratified by Sulla and embodied in his *Lex de Sicariis*.

former jurors.¹ Take my word for it, gentlemen, and look out for what you should be on your guard against : nothing else is aimed at now than to involve the equestrian order in liability to this statute. And this is the aim not of all, but only of a few. For those senators whose blamelessness and integrity is to them a ready shield, such as you in very truth are, and all whose lives have been free from the spirit of partisanship,² desire the knights to rank next to the senatorial order and to be closely bound to it in the bonds of unanimity. But they who wish a monopoly of power for themselves, on which they will not allow any one else, whether individual or class, to encroach, imagine that this one source of dread will enable them to bring the knights under their control ; if, that is to say, the rule is laid down that those who have served as jurors³ are liable to such a prosecution as

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¹ Sulla had, among other measures, reversed the enactment of C. Gracchus above referred to, and had transferred to the senate the privilege of serving as jurors of which the knights had enjoyed the almost unbroken monopoly for nearly fifty years. Cicero says that if, in re-enacting the law of Gracchus to repress judicial corruption, he could have made amenable to its penalties (retrospectively?) those who, like Cluentius, were now excluded from the privilege of serving as jurors, he would gladly have done so ; but the charge of "judicial circumvention" could only be made against those who actually exercised the functions of jurors under the new conditions—*i.e.*, the senatorial order. As it was, Sulla had recourse to violent measures in order to wreak his vengeance on the equites, who had resisted him ; and Appian tells us that 1,600 of them perished by his first proscription.

² For this meaning of *cupiditas*, vide note on 66.

³ *I.e.*, even though they are not senators. The argument is obviously unfair. Cicero is endeavouring to excite the class-feelings of the equites, whom he proceeds in the following passage specially to address. He argues that the effect of extending the operation of the Cornelian Law from the senators to members of other classes

153. the present. For they see that the reputation of this order is establishing itself, they see that your decisions are finding favour, and they rely on being able to pluck out the sting of your severity by holding over you this motive to fear. Who would dare to give a true and courageous verdict even in a case where the defendant is a man possessed of resources only somewhat above the average, if he saw that he might have to answer to a charge of combination and conspiracy?

LVI. How courageous were those Roman knights who withstood that most distinguished and powerful tribune M. Drusus,¹ when, in conjunction with the whole aristocracy of the day,² he was aiming at nothing short of bringing to trial in courts of this kind those who had exercised the functions of jurymen! On that occasion C. Flavius

who might have been guilty of the offence against which it was directed (as would be done if Cluentius were held liable to its provisions), would be to place the equites on the same level as the members of the senate. But as the former now (B.C. 66) shared with the latter and a third class (the *tribuni ærarii*) the privilege of serving as jurors, they should surely have been made to accept the responsibilities attendant on that privilege.

¹ In B.C. 91 M. Livius Drusus came forward with a series of measures for reform which aimed, among other objects, at checking the corruption which had so long been the scandal of the law-courts, then in the hands of the equestrian order. He proposed to transfer them from the knights to the senate, recruited by an addition of three hundred members to be taken from the ranks of the former; and further to appoint a special tribunal for the trial of such jurors as should be guilty of receiving bribes. His measures were cancelled immediately after his assassination.

² The "aristocracy of the day" included such names as M. Æmilius Scaurus, the *princeps Senatus*, L. Licinius Crassus, M. Antonius, Q. Mucius Scævola, Q. Lutatius Catulus, and others. The most distinguished of their opponents was the consul L. Marcus Philippus.

Pusio, Cn. Titinius, C. Mæcenas, those bulwarks of the people of Rome and of the equestrian order, did not act as Cluentius has acted now. They did not think they would be incurring any blame by protesting, but offered a most unconcealed resistance, protesting and openly asserting, with the utmost courage and propriety, that if they had cared to bestow their endeavours on the pursuit of office they might, by the verdict of their countrymen, have attained to the most exalted position; that they had seen without despising the glory, the distinction, the high station inherent in such a career; but that, satisfied with the rank their fathers had held before them, they had preferred to follow the life of quiet and repose, far from the blasts of popular prejudice and of prosecutions such as this. "You must either give us back the freshness of youth for the pursuit of office, or else, as that cannot be, leave us in the rank of life whose attractions led us to abandon that pursuit. It is not fair that we who have foregone the distinctions of office by reason of its manifold risks, while depriving ourselves of the favours of our countrymen, should also be liable to the risk of accountability to newly-instituted courts of law. A senator cannot urge this complaint because these are the terms on which he begins his political career, and because he enjoys many distinctions with which to alleviate its irksomeness. To him belong position, reputation, glory at home, renown and influence among foreign nations, the embroidered robe, the curule chair, the lictor's rods, high command, provincial rule; in all which," they say,¹ "our ancestors wished to hold out the

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¹ *Voluerunt* is to be noticed, as apparently a transition to the direct, rather than an added remark of the orator's. *Voluerint* would perhaps be more regular, in view of such examples as *ducenda sit* and *debeat* in *Ad Fam.* v, 16, 4.

highest rewards for good conduct as well as additional liability for wrong-doing." These men did not protest against being impeached under the law by which *Habitus* is now being prosecuted, and which at that time was the *Sempronian* instead of the *Cornelian* as now. They were aware that it did not bind the equestrian order, but they were anxious to secure themselves from liability to the provisions of a new enactment. *Habitus* has never so much as objected to render an account of his life even under a statute to which he is not amenable; and if this state of things meets with your approval, let us all make it our aim that the jurisdiction of this court be as soon as possible extended to all classes of the community.

LVII. Meanwhile let us not, in Heaven's name, depart from those laws by which we maintain all our advantages, our rights, our liberties, our very existence! And let us withal bethink ourselves how inequitable it is that the people of Rome should not be watching their interests at this time; that having entrusted to you their country and their fortunes, they themselves are free from anxiety, and have no fear that the action of a few jurymen may bind them fast in the fetters of a law which they never sanctioned, and of a court from whose jurisdiction, as they imagine, they are altogether exempt. For my worthy and eloquent friend *T. Accius* urges in his pleading the principle that every law is binding on every citizen;¹ and you give him a silent and attentive hearing,

¹ This appears to be a slight exaggeration of the real argument of his opponent. *Accius* appears to have contended (150) that the same laws should be binding on all who came within the sphere of their operation, *e.g.*, in the case before us on knights as well as on senators, since both orders now shared the administration of the jury-courts; but this hardly amounts to saying that every law is binding on every citizen.

as you are in duty bound to do. A. Cluentius, Roman knight as he is, makes his defence under a statute to which senators and those who have held office are alone amenable; and he prohibits me from entering a protest, and from establishing the artillery of my defence in the citadel of law. If he wins his case—as we trust, relying on your justice, that he will—the universal opinion will be, and rightly, that it is his own guiltlessness that has won him it, since his defence has been conducted in this way, and that he derived no protection from the letter of the statute, of which he refused to avail himself.

Here there is a point which I have already said concerns myself, and in which I have a duty to perform to the people of Rome, seeing that my condition of life requires me to devote my every consideration and endeavour to defending individuals from the perils of actions-at-law. I see how powerful, how dangerous, how unlimited in jurisdiction is the tribunal which the prosecution is seeking to set up in their endeavour to extend to the community in general a statute which was directed against the order to which we senators belong. The words of this statute are, “Whosoever shall have conspired”—and you see how comprehensive that is; “shall have combined”—equally indefinite and ambiguous; “shall have conspired”—this indeed is indefinite, and obscure and unintelligible as well; “or shall have given false evidence”—did ever any member of the Roman commons give evidence but must be prepared to take this risk, if Accius is allowed to have his way? For I positively assert that no one will ever again give evidence at all if the commons of Rome are to be exposed to the jurisdiction of this court. But I promise each and all who may possibly get into trouble under this statute without being

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LVIII.

159.

really amenable to it, that if they care to employ me as their counsel, I shall rest their defence on the protection the law affords ; and either before these jurors or others like them shall very readily make good my case, availing myself to the full of the technical defence which I am on this occasion interdicted from employing by one whose wishes I am bound to respect. For I must not doubt, gentlemen, that if any charge such as the present were brought before you against one not amenable to the statute, you would hearken to the voice of conscience rather than of hate, and even should he be in bad odour and personally objectionable to many—even though you loathed him—would nevertheless acquit him, though it would go against the grain to do so. For it is the part of a wise juror to reflect that the powers assigned to him by his fellow-countrymen are defined by the extent of the charge with which he has been entrusted. He must remember that he is the object of confidence as well as the depository of authority. He must bethink himself that it is open to him to acquit where he hates, or to convict where he does not hate, and must always consider, not his own personal predilections, but the demands of law and conscience. He must give his attention to the statute under which the defendant is charged, the character of the man whose case he is investigating, and the issue before the court. These things he must look to ; and further, gentlemen, a great and good man ought to reflect, on taking the voting tablet into his hand, that he is not alone, and that it is not open to him to do just as he pleases. He must take for his assessors the law, conscientiousness, righteousness, good faith ; and, putting far from him caprice, hatred, prejudice, fear, and every passion, must rate above all else the testimony of his own

conscience, Heaven's gift to us that cannot be taken from us. If that bears witness throughout our lives to the noblest thoughts and actions, our minds will be free from fear,¹ and our lives in the highest sense honourable.

If T. Accius had been aware of this, or had ever given a thought to it, he would assuredly never even have attempted to say, instead of arguing the point as he did at length, that a juror has to decide as he thinks best, and ought not to be fettered by the laws. On this head, however, I imagine I have said enough for men of your intelligence, though Cluentius would have been content with less, while the dignity of the subject might have demanded more. The remaining points are few in number; because they properly belonged to your court, the other side thought they would have to bring them forward as fictitious charges, that they might not be found altogether too disreputable if they came before you with nothing but prejudice to back them. And if you wish to be convinced that I have of necessity dwelt at greater length on the points of which I have now spoken, listen to what follows; you will assuredly be made aware that I have in my defence stated most briefly such points as were capable of a short demonstration.

You said that the Samnite Cn. Decitius, the same who was proscribed, suffered ill-treatment in his day of trouble from the members of my client's household establishment. No one behaved more generously to him than did Cluentius. It was his resources that supported him in his great misfortune, and of this he himself, as well as every one of his friends and connections, is aware.—You further said that a bailiff of my client laid violent hands on the herdsman of Ancharius and Pacenus. Some ordinary

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LIX.

161.

¹ *Metus*, religious or moral apprehension.—H. N.

- shepherds' quarrel having arisen on the hillside,¹ the bailiffs of Habitus stood up for their master's property and for the rights of private occupation; remonstrances were made, and when they had carried their point with the others they parted company without any wrangling
162. or appeal to law. "A near relative was disinherited by the will of P. Ælius, and the defendant, a distant connection, was made his heir-at-law." In doing this P. Ælius only discharged an obligation to Habitus; the latter was not present when the will was made, and the will itself was witnessed by his enemy, Oppianicus. "He refused to allow a legacy left by will to Florus." That is not the case; 30,000 sesterces had been inserted instead of 300,000, and as he thought Florus could not show sufficient warranty,² he wished to make him in some degree indebted to his personal generosity. So, after first refusing to allow the claim, he afterwards paid it without dispute. "The wife of a certain Samnite, Ceius by name, had to be demanded from him when the war was over." He had bought the woman from the speculators;³ but as soon as he was told she was a freewoman, he gave
163. her up to Ceius without any litigation. "There is one Ennius of whose property Habitus is in possession." This Ennius is a needy slanderer, a hireling of Oppianicus, who, after keeping quiet for very many years, one

¹ *In collibus* seems to have been the MSS. reading, and gives excellent sense; but modern editors have altered it to *in callibus*, "on the mountain tracks."

² The wording of the will could not in itself be held to prove the claim.

³ *Sectores* were those who made wholesale purchases when property confiscated to the state was put up to auction, with the view of retailing what they had bought at a profit. They would do a good deal of business in the social war.

day brought an action for theft against the slaves of Habitus, and has lately begun to sue Habitus himself. In the civil action, in which perhaps you will also appear for him, this fellow will not escape, take my word for it, the penalties of calumny. And further, we are informed that you are suborning a certain person who plays the host extensively, Ambivius, an innkeeper in the Latin way—to say that in his own hostelry he had violent hands laid on him by Cluentius and his servants. About this man I have no need to say anything at present. If in pursuance of his calling he gives us an invitation, *we* shall entertain *him* in such a way that he will regret ever having left the highroad.¹

There you have, gentlemen, all that his accusers have succeeded in raking together for the whole case, after eight years' preparation, concerning the character of A. Cluentius, against whom, on his trial, they would fain stir up ill-feeling. How trivial are the allegations in themselves, how groundless in fact, how short to answer! Listen now to what concerns the oath you have sworn, to what belongs to your court, to what the statute of poisoning, in obedience to whose summons you are here assembled, has imposed on you as an obligation. I should like all to know how brief the statement of this case could have been made, and how much that I have said was spoken in deference to my client's wishes but did not in any way concern your court.²

¹ Travellers were said "decedere de via" when they turned in (devertere) to an inn by the roadside. Cicero's joke is that he will play the host and entertain the fellow in such fashion that he will wish he had continued his journey. Or it may be "that he will regret having gone out of his way (or, having left the Latin way), to come to Rome on business that did not concern him."

² The court was only concerned with the direct charges of poison-

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LX

165. It was alleged by the prosecution that A. Cluentius made away with Vibius Capax by poison. There is opportunely present in court a most reputable and in every way worthy person, the Senator L. Prætorius, whose hospitality and intimate friendship this Vibius enjoyed, with whom he lived at Rome when he was taken ill, and at whose house he expired. I assert that he died intestate, and that the succession to his estate was by edict of the prætor assigned to Numerius Cluentius, his sister's son, whom you see here in court, a most honourable and eminently estimable young man, and a Roman knight to boot.¹
166. The second charge of poisoning states that poison was, at the instigation of Habitus, prepared for young Oppianicus here, when a large company was breakfasting together, as is the custom at Larinum, on the occasion of his marriage; and that when it was being offered him in honey wine, Balbutius, one of his friends, intercepted it on its passage, drank it, and instantly expired. If I were to treat this matter as if I had an accusation to dispose of, I should state at greater length what I am now cursorily mentioning in my speech.
167. What has Habitus ever done that this monstrous deed should not be thought quite foreign to his character? And had he any reason for being in such fear of Oppianicus, seeing he could not have said one single word in this case,² while, as you will presently be made aware,

ing; but so anxious was Cluentius to maintain his reputation, that Cicero was instructed to reply to these trivial side-issues.

¹ By this reference to ~~the~~ man's will, Cicero evidently wishes to prove that his client can have had no motive for attempting his life. But as the nephew of Cluentius came in for the inheritance, it might perhaps have been as well to have omitted this argument.

² It is useless to say this means that his youth would have prevented Oppianicus from bringing an action; for time would soon have

so long as his mother lives my client can never be free from prosecution? Was it that he wanted his case to lose no element of danger, but rather to have a fresh charge added on to it? What kind of a time was that to choose for administering poison, on such a day and before such a number of people? By whom, moreover, was it offered? Where was it procured? What about the stoppage of the cup? And why was it not offered afresh? There is much that might be said; but I shall not lay myself open to the charge of wishing to say something while saying nothing.¹ The facts are their own defence. I assert that the youth spoken of, who, according to you, expired immediately after draining the cup, did not die on that day at all. It is a monstrous accusation and a shameless falsehood. I say that when he came to the breakfast he was suffering from indigestion, he indulged his appetites too freely at the time, as young men like him will do; and he died in consequence after a few days' illness. Who will vouch for this? The same man who will vouch for his own sorrow—his father—the young man's father, I repeat. He who for his grief of heart could have been induced by a very faint suspicion to come forward on the other side as a witness against A. Cluentius, gives him the support of his testimony instead. Read it. And do you, sir, if you please, stand up for a little, and endure the pang of this indispensable allusion; on which I shall not linger any longer, since by acting like the excellent man you are, you have not permitted

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healed this defect. May not the words mean he had no need to fear Oppianicus because he knew he could not have the shadow of a case? *Nihil periculi* below is not really against this view, *periculum* being a formal word.

¹ The figure called Omission is a favourite with orators.

your sorrow to involve the guiltless in the calamity of a baseless accusation

LXI. 169.

I have still one similar charge remaining, gentlemen, which will enable you thoroughly to appreciate the truth of what I said in the beginning of my speech—that whatever misfortune A. Cluentius has seen during these past years, whatever anxiety and trouble he has had at this time, has been entirely due to the machinations of his mother. You allege that Oppianicus lost his life by poison given him in a piece of bread by one M. Asellius, an intimate friend of his, who acted, you say, at the instigation of Habitus. Now I have first to ask what motive Habitus had for wishing to take the life of Oppianicus? I admit, indeed, that they had been at enmity. But it is either from feelings of fear or of hatred that men desire the death of their enemies, and what fear, I ask, could have prompted Habitus to seek to perpetrate such a monstrous crime? Was there any reason why any one should be afraid of Oppianicus now that he had been punished for his crimes and banished the country? What had he to fear? The attack of a ruined man? Impeachment by a felon? Harm from the evidence of an outlaw? If again it was because he hated his enemy that Habitus desired his death, was he such a fool as to think that the life which Oppianicus was then living—condemned, an outlaw, forsaken by all—was worthy of the name, when, owing to the monstrosity of his character, no one would receive him into his house, no one would go near him, no one would speak to him, no one would look at him? And was it to this man that Habitus grudged his life? If he hated him bitterly and with all his heart,

171.

¹ He was banished from Rome (175.) *Civitas* stands for the body of *cives*, πόλις, city.

ought he not to have wished him to live as long as possible? Was his enemy to hasten his death — death that in his troubles was for him the only refuge from misfortune? Why, had he possessed a spark of spirit or courage, he would have died by his own hand, as many brave men in like afflictions have done before him; and wherefore would his enemy wish to put in his way what he ought to have desired for himself? As it is, I wonder what evil death has brought him! Unless indeed, carried away by idle tales, we imagine that he is suffering in the nether world the punishment of the wicked, and that he has fallen in with more enemies there than he left behind him here; that by the avenging furies of his mother-in-law, of his wives, of his brother, and of his children, he has been driven headlong into the place where the ungodly have their home.[†] If, however, these representations are untrue, as all must know they are, what, I ask, has death taken from him save the sensation of misery?

But again, by whom was the poison administered? 172.
By M. Asellius. What connection had he with Habitus? LXII.
None; in fact, as he was very intimate with Oppianicus, he was more probably even on bad terms with him. Did he then choose the person who, as he knew, was

[†] There is abundant evidence in the writings of Cicero that he did not disbelieve in the immortality of the soul and a future state; and we must accordingly infer that he is speaking here merely as the rhetorician. In the *De Senectute*, and in the *Tusculan Disputations* (Book I.), he states the arguments of Plato on behalf of the belief; and the *Somnium Scipionis* in *De Repub. vi.* concludes with an allusion to the rewards to be enjoyed in the future state by those who have been faithful servants of their country in this life. Cp. too his eulogy of Servius Sulpicius in the Ninth Philippic, especially the beginning of ch. vi.; also the concluding sections of the Fourteenth.

- anything but friendly to himself, and who was an intimate acquaintance of his intended victim, to be the instrument of his own crime and of the jeopardy of his foe? Then why do you, whom filial piety has prompted to undertake this prosecution, suffer this Asellius to go so long unpunished? Why have you not followed the example of *Habitus*,¹ and so secured, by the conviction of the man who proffered the poison, a previous verdict prejudicing my client? Again how incredible it is, gentlemen, that poison should have been administered in a piece of bread! how unusual! how strange! Could it diffuse its effects more readily thus than in a draught,² or more widely when concealed in a portion of bread than if it had been entirely dissolved in a liquid? Could it make its way into the veins and into every part of the body more quickly when taken in food than when taken in drink? Would it be more likely, in the event of discovery, to escape detection in the bread than in the draught, where it would have been so mixed as to be altogether incapable of separation? “But he died a sudden death.” Even had that been the case, it would nevertheless, owing to the frequency of such occurrences, furnish no adequate ground at all for suspecting poison; and even if there were room for such a suspicion it would nevertheless fall on others before my client. But it is just here that men lie in the most shameless way, as you

¹ *Habitus* first impeached Scamander and C. Fabricius; and their conviction, according to Cicero, involved the guilt and conviction of *Oppianicus*.

² *Baiter* exhibits this passage in such a way as to make it unnecessary to suppose an ellipse (*e.g.*, in *pane dari*) after “*faciliusne potuit quam in poculo*,” though the sentence is awkward to handle in English. The predicate of all three clauses is “*potuit in venas atque in omnes partes corporis permanere*.”

will see if you will listen to the story of his death, and of how after his death a charge against Habitus was raked up by his mother.

Wandering an outlaw from place to place, and finding no entertainment anywhere, Oppianicus betook himself to C. Quinctius, in the Falernian territory; there his illness began, and he remained for a long time seriously indisposed. Sasia, who was with him, under the idea that the purity and legitimacy of the marriage tie had been set aside by her husband's conviction, was holding closer intercourse with Sex. Albius,² a lusty yeoman who used to keep company with her, than her husband, with all his looseness, could have endured in the days of his prosperity; and much of this Nicostratus, a faithful slave of Oppianicus, very inquisitive and very truthful, is said to have reported to his master. Meanwhile Oppianicus began to recover. Unable to put up any longer with the unconscionable conduct of the Falernian yeoman, he set out for Rome, where he used to have some hired lodgings outside the city gates, but falling from his horse he is said to have struck his side violently, in bad health as he was, and to have died a few days after reaching the city in a fever. Such, gentlemen, are the circumstances of his death. Either they involve no suspicion at all, or, if they do, it hangs upon some domestic tragedy comprised within the four walls of his house.

On his decease that abominable woman began at once to plot against her son. She resolved to hold an inquest on

¹ The Ager Falernus was a district in the north of Campania, lying between the Massic hills on the borders of Latium and the river Volturnus. It was here that the choicest wines of ancient Italy were grown (Horace, *Od.* ii. 3, 4; iii. 1, 41).

² S. T. have Attius.

her husband's death. Having bought from A. Rupilius, who had been the medical attendant of Oppianicus, one Strato—as if forsooth she entertained the same design as Habitus when he bought Diogenes—she gave out that she intended to examine this Strato by torture, as well as Ascla, one of her own slaves; and she further called on young Oppianicus to give up for like examination the slave Nicostratus, whom she suspected of having been too communicative in his excessive fidelity to his master. At that time Oppianicus was but a boy; and being told that it was about his father's death that the inquest was to be held, he did not dare to refuse, though he believed the slave had been well disposed to his father and was so also to himself. The friends and guest-friends of Oppianicus and of the woman herself are called together in large numbers, men of reputation and of every kind of distinction; and in the rigid inquiry which ensues all sorts of instruments of torture are brought into requisition. The slaves were wrought on both by hope and by fear to make them say something on the rack; but I suppose it was the high character of the spectators, and the intensity of the torture,¹ that led them to hold by the truth and to protest that they had nothing to tell.¹ So by advice of the friends

¹ B. and K. bracket the difficult words “et vi tormentorum,” though there seems to be no MS. authority for so doing. It is surely possible to believe that, without meaning any reflection on the witnesses, which would be quite inconsistent with what he says in the context, Cicero is here stating sarcastically what was obviously *not* the real reason of the obstinacy of the slaves under torture, in place of what was, viz., their consciousness of innocence. That examination by torture often had an opposite effect to what was intended is evident from such passages as Tac. Ann. iv. 29, “etiam si tormenta perveracia servorum contra evenissent.”

the inquiry was adjourned for that day. After a considerable interval they are summoned a second time; the examination is begun over again, and all the most powerful and agonizing tortures are applied. Unable to stand it any longer, the witnesses expostulate.¹ The bloodthirsty and unnatural woman is beside herself with rage at the utter disappointment of her designs; and though now the torturer and his very instruments were wearied out, she refused to desist. Then one of the spectators, a man whom his country had honoured with high office, and who was personally of the most exalted worth, remarked that he saw her object was not to find out the truth, but to force them to make some false deposition. With this the rest agreed, and so it was unanimously resolved that, in their opinion,² the inquiry had gone on long enough. Nicostratus is given back to Oppianicus, and Sasia herself departs with her people for Larinum, grieved at the thought that her son would now surely be beyond the reach of danger. Not even the fictions of suspicion, she reflected, far less a regular accusation, could touch him; and not even his mother's secret plottings, to say nothing of the open attack of his enemies, had been able to do him harm. On her arrival at Larinum, she who had pretended that she was fully convinced that Strato had in time past administered poison to her husband, forthwith made him a present of a shop in the town, equipped and fitted up for the practice of medicine. For one, two, three years Sasia kept quiet; it seemed

177.

178.

LXIV.

¹ B. and K. read *adversari*, which is nearer the MS. *adversarii*; but surely *aversari* is much more suitable to the context. "The bystanders are shocked, and can scarcely endure it any longer;" Sasia raves; and *then* one of the company expostulates.

² For similar slightly pleonastic constructions, cp. *Pro Lege Manilia*, sec. 38, *statuetis quid . . . existimetis*; also secs. 11 and 46.

179. as if she were praying and desiring that some disaster
 B.C. 69. might come upon her son, rather than planning and
 contriving it. In the interval, during the consulship of
 Q. Hortentius and Q. Metellus, designing to draw him
 on to this prosecution, though his attention was otherwise
 occupied and nothing was further from his thoughts, she
 betrothed to Oppianicus here, against his will, the
 daughter whom she had borne to her son-in-law, in the
 hope that these matrimonial bonds, as well as the fetters
 of an expectant heir, would put him in her power. About
 this very time Doctor Strato committed a domestic theft,
 aggravated by murder, under the following circumstances.
 There was in the house a cabinet which he knew con-
 tained a considerable sum in gold and silver. So by
 night he killed two of his fellow-slaves in their sleep, and
 flung them into the fishpond; and then, cutting out the
 bottom of the box with his own hands, he removed
 (150,000¹) sesterces and five pounds' weight of the gold,
 one of the slaves, a mere boy, being privy to the deed.
180. Next day the theft was discovered, and suspicion was
 directed exclusively against the slaves who were missing.
 But on noticing that the bottom of the box had been cut
 out, men began to ask by what means it could have been
 done; and one of SASSIA'S friends recollected that he had
 lately seen for sale at an auction, among other small
 effects, a bent crooked little saw, with teeth all over it,
 by which he thought the part removed could have been
 cut out. To be brief, on inquiry being made of the
 collectors,² it is discovered that the saw in question had

¹ The figures have dropped out of the MSS.

² The *coactores* were employed to collect the money due by those who had made purchases at sales by auction. It is interesting to remember that Horace's father was employed in this capacity (Hor. Sat. i. 6. 86).

found its way into the hands of Strato. This aroused suspicion ; and when Strato was openly charged with the crime, the boy who had been his accomplice became greatly terrified and made a clean breast of the matter to his mistress. The bodies were found in the fishpond. Strato was thrown into prison, and furthermore the money, though by no means all of it, is discovered in his shop.

A criminal investigation is instituted into the theft. What else can one suppose ? Do you tell me that after the pillaging of the box, the abstraction of the money (which was not all recovered), and the murder of the slaves, it was concerning the death of Oppianicus that the inquiry was appointed ? Can you satisfy any one of this ? Is there anything more improbable that you could have brought forward ? To pass over other points, was inquiry held into the death of Oppianicus three years after his decease ? Aye, and even on this occasion, inflamed by her former hatred, she again demanded Nicostratus for a groundless examination. At first Oppianicus refused ; but afterwards, when she threatened to take away her daughter and alter her will, a most faithful slave, to humour a most bloodthirsty woman, was by him not given up for examination but simply handed over to the executioner.

Well then, after an interval of three years, the inquiry into her husband's death was reopened.¹ Who were the slaves examined ? A fresh charge was alleged, I suppose, and suspicion was directed against fresh persons—Strato and Nicostratus ? What ! had not these men been examined at Rome ? Can it be that you, Sassia, with guilt now to aggravate the distemper that had before infuriated your woman's heart, after having held an inquiry at Rome

¹ Reading "agitata denuo . . . habebatur."

at which it had been determined, on the representation of T. Annius, L. Rutilius, P. Satrius, and the other honourable men, that the thing had evidently¹ gone on long enough—can it be, I ask, that three years afterwards, without inviting the presence, I shall not say of any man, or you might perhaps retort that the yeoman was in attendance, but of any respectable man, you attempted, about the same matter and on the same persons, to hold an inquiry that involved capital consequences to your son?

183. Or do you say (for a possible argument occurs to me though you must remember that it² has not yet been put forward) that it was when investigation was being made into the theft that Strato made a confession about the poison? In this very way, gentlemen, does it happen that truth raises her head out of the depths to which depravity oftentimes weighs her down, and the defence of innocence that has been stifled breathes again. Either cunning rogues have no daring in proportion to their invention, or they whose audacity is conspicuous and prominent have no knavish arts by which to back it. But if craft were daring or audacity cunning, resistance would be hardly possible. Was the theft not committed? Why, nothing was more notorious at Larinum. Then did suspicion not attach to Strato? Why, the saw was his accuser, and the boy who had been his accomplice informed on him. Was this not the object of the inquiry? What other ground, then, was there for holding it? Will you not have to say what Sasia said more than once at

¹ Cp. note on sec. 177.

² B. & K. have "tametsi adhuc non esse hoc dictum mementote;" but an argument might be derived for the other reading (tametsi ab hoc non esse dictum) from the sentence at the end of this section, from which it would appear that Sasia had made this statement though Accius had not availed himself of it for the defence.

the time—that when investigation was being made about the theft Strato while on the rack made a statement about the poison? Here we have an instance of what I said above; the woman has audacity enough and to spare but is wanting in prudence and tact. Several minutes of the depositions made at the inquiry are brought forward; they have been read aloud and communicated to you, and they are the very minutes which she said were attested by the signature of the witnesses at the inquiry. But in them not a syllable about the theft is to be found. It never occurred to her first to write out Strato's deposition about the theft, and afterwards to tack on some statement about the poison which might seem not to have been elicited by direct questioning but to have been wrung from him in his agony. The subject of the inquiry is the theft. The suspicion of poisoning had been done away with by the previous inquiry, as, indeed, the woman herself had admitted; for after deciding at Rome, on the representation of her friends, that it had gone far enough, she had during the three years that followed shown a fondness for this Strato above all her slaves, holding him in high esteem, and conferring on him every mark of favour. Well then, when inquiry was being made about the theft—the theft, namely, which beyond all dispute he had committed—did he without saying a word upon the subject of that inquiry make a statement at once about the poison? If he did not speak of the theft when one might have expected him to do so, did he never even at the end, or in the middle, or at least in some part or other of the inquiry, say a single word about it?

You see now, gentlemen, that with the same hand by which, if opportunity were given her, she would gladly slay her son, this abominable woman has forged her ac-

184.

185.

LXVI.

count of the inquiry. And even with regard to it, can you mention the name of any single individual who witnessed it with his hand and seal? You will find no one, except perhaps a person whose character is such that I should prefer his being brought forward to no name being mentioned at all. What say you, T. Accius? Are you actually bringing before the court a capital charge, a criminal information, a written instrument involving the fortunes of another, without giving the name of any voucher for that instrument, of any one who sealed it, of any one who witnessed its signature? And will this honourable court admit the weapon which you have drawn forth from a mother's bosom for the ruin of a most guiltless son? But enough; the document has no weight. As to the inquiry itself, however, why was it not reserved for the court? why not for the friends and guest-friends of Oppianicus, whom she had invited to be present on the former occasion? why not at least for the existing conjunction? What was done with these men? I ask you, Oppianicus, to say what happened to your slave, Nicostratus. You were shortly about to impeach my client, and you ought therefore to have brought him to Rome, allowed him to give information, aye, and preserved him in safety for examination, for this court, and for this occasion. As to Strato, gentlemen, I have to inform you that he was crucified after having had his tongue cut out, as is known to every one at Larinum. It was not her own evil conscience that the distraught woman feared, it was not the detestation of the townsmen, it was not the public scandal. Just as if every one were not to be a witness to her crime, what she dreaded was lest the dying words of a slave should testify against her.

* Reading "dicite, qui obsignarit, unum aliquem nominatim."

Gracious Heaven! what a prodigy have we in this woman! Where in the whole world can we point to such a monster of iniquity, where to such a hateful and horrible abomination as having ever had its birth? Surely you see now, gentlemen, that it was only under constraint of the weightiest reasons that I spoke as I did of a mother at the beginning of my speech. Yes, there is no form of evil or of crime that she has not from the first desired, longed for, contrived, and put into execution against her son. I say nothing of her first outrageous lust, I say nothing of her accursed union with her son-in-law, I say nothing of how a mother's passion drove a daughter from her husband's arms; all this, though it brought dishonour on the whole family, did not go so far as to put my client in danger of his life. I do not arraign her second marriage with Oppianicus, by contracting which—but not till he had given her his children's lives in pledge—she plunged a family in mourning for the death of those who should have been her step-sons. I pass by the fact that, though she knew that it was Oppianicus who had procured the proscription and assassination of A. Aurius, whose mother-in-law once and whose wife but a short time before she herself had been, she chose for herself a habitation and a home in which the tokens of her husband's death and his despoiled estate would day by day be present to her eyes. My first charge relates to the criminal attempt at poisoning by Fabricius, which has now at length been brought to light. What was even at that early date matter of suspicion to men in general, and of incredulity to my client, now appears evident and obvious to all: the mother cannot of course have been

¹ *Alteris*, second of two. It was really her third marriage, but he is leaving her union with the father of Cluentius out of account.

kept in ignorance of that attempt.¹ Oppianicus contrived nothing apart from the woman's co-operation. Had he acted alone, she would surely have left him after the detection of his design, and left him not as one separating herself from a wicked husband, but as fleeing from a most ruthless foe ; she would surely have turned her back for all time upon a house that was a very sink of iniquity.

190. But so far was she from doing this that from that time forth she lost no opportunity of hatching some plot or other, devoting all her powers of thought every day and every night to the destruction of the son of her bosom.² And first, by way of nerving Oppianicus there for the prosecution of her son, she bound him to herself by gifts and presents, bestowing on him her daughter's hand in marriage, and holding out the hope of succession to her estate.

LXVII. Thus whereas in most cases, when unaccustomed enmity has sprung up among kinsmen, we see divorces and the severing of relationships ensue, this woman thought that no one would be strong enough for the prosecution of her son except one who had previously taken his sister to wife. New relationships often lead others to lay aside long-standing animosities ; she thought that in the bond of relationship she would have a pledge that would give a backbone to her feud. Nor did she bestow all her pains on securing a prosecutor for her son ; she

191.

¹ In this complex sentence *illud primum queror* serves to introduce the charge of complicity against Sassia contained in the words *non est . . . celata*, which again resume the clause beginning *quod iam tum recens*. Mr. Nettleship suggests a full stop at *veneni*, which would bring out the construction more clearly. The reference in *quod . . . videtur* cannot be to the guilt of Fabricius, which is said to have been self-evident (17) ; and *recens* stands for *recenti re*.

² For the position of *mater*, cp. Verg. Ecl. v. 23, Æn. viii. 370.

also pondered with what weapons she could furnish him. To this end it was that by means of threats and promises alike she worked upon the slaves; to this end did she hold those everlasting and most barbarous inquests on the death of Oppianicus, which were at last brought to a close not by any moderation on her part but by the influence of her friends. In the same iniquity originated the inquiries held three years afterwards at Larinum; in the same distraction of mind the forgery of the depositions there made; in the same frenzy also the execrable amputation of Strato's tongue. She it was, in short, who found and got ready all the materials of this elaborate indictment. And after despatching thus equipped to Rome a prosecutor for her son, she herself tarried awhile at Larinum in order to seek out and hire the witnesses; but on being informed of the near approach of the defendant's trial, she hastened hither with all speed, for fear that the prosecution might fail in diligence, or else that the witnesses might want money, or that she might perchance miss seeing this man's garb of mourning, and his unkempt appearance, a spectacle so dear to her mother's heart.

192.

But what, think you, were the circumstances which attended her journey to the capital? I live in the neighbourhood of Aquinum and Fabrateria,¹ and from many citizens I have heard and ascertained the facts. What crowds ran together in these towns! What loud groans were uttered alike by the men and by the women! The idea of a lady of Larinum actually setting out for Rome from the very shores of the Adriatic, with a crowd of attendants and a store of money, in order to be able more

LXVIII.

¹ These towns were not far distant from Arpinum, the place of Cicero's birth. All three were in Latium.

readily to compass in a capital trial the ruin and destruction of her son ! There was, I might almost say, not a man among them but thought that every spot on which she had set her foot would require to be freed from pollution ; not a man but thought that the footprints of crime-stained mother were a profanation to the earth, the mother of all. So in no town was she permitted to make a halt. Inns there were in abundance, but nowhere was there found a host who did not shun the contagion of her presence. She preferred to entrust herself to the solitude of night rather than to any city or hostelry. And thinks she now that any of us are unaware of her schemes, her intrigues, her daily stratagems ? Full well we know those whom she has approached, to whom she has promised money, whose honesty she has attempted to shake by proffers of reward ; aye, and we have heard of her nightly sacrifices, which she imagines are a secret, of her impious prayers and her abominable vows, by which she makes the very gods in heaven witnesses to her crime ; not knowing that it is piety, and holy fear, and the prayers of the righteous that avail to turn their hearts, not the defilements of superstition, nor the blood of victims sacrificed for the furtherance of crime. Her unnatural frenzy I am confident the immortal gods have spurned from their altars and their shrines.

LXIX. 195.

Do you, gentlemen, whom fortune has appointed to play the part of another Providence ¹ to A. Cluentius here

¹ Reading *quasi aliquos deos*, which is Halm's correction. The consensus of MSS. seems to be in favour of 'alios deos,' to which 'quosdam' was probably afterwards prefixed to soften down the figure, *quidam* being often used by Cicero in construction with nouns with the force of *quasi* or *tanquam* (e.g., *ruina quædam atque tempestas*, sec. 96).

for all the rest of his life, ward off from the person of her son the monstrous inhumanity of this mother. Men have often on the bench pardoned the offences of children out of compassion for their parents : do not you, we pray you, sacrifice to his mother's unnatural cruelty the life this man has most virtuously led, especially as you may see a whole township arrayed in evidence against her. You must know, gentlemen, that all the men of Larinum—incredible though it is, I say it in all truth—all who were able made the journey to Rome, to give my client, so far as in them lay, the support of their sympathy and numbers in this his hour of danger. Their town has at this time been committed to the care of the women and children, and is at present under the protection, not of its ordinary defenders, but only of the general peace which prevails in Italy. * And yet even they, no less than these whom you see here in court, are kept day and night in suspense and disquietude about the issue of this trial. For in their view it is not on the fortunes of a single townsman that you are about to give your verdict, but on the standing of the whole municipality, on its credit, and the whole body of its interests. Gentlemen, the defendant is conspicuous for devotion to the public good of his town, for kindness to the inhabitants individually, for righteousness and conscientiousness towards all men ; and he moreover maintains in his own circle the position of high rank bequeathed him by his forefathers in such a way as to emulate their gravity, their force of character, their

196.

* Mr. Nettleship thinks that Madvig's reading '*non domesticis copiis esse tutum*' may be the true one. The vulgate '*in dom. cop. esse totum*' might be rendered 'is wholly in the keeping of the forces of the hearth and home : ' but it is difficult to see the point of '*communi Italix pace.*'

popularity, their generosity. And therefore do they in the name of the community pronounce his eulogy in language which not only expresses their deliberate opinion of his character, but bears witness also to their solicitude and sorrow; and while this eulogy is being read I must
 197. ask you who have brought it to stand up.¹ From the tears of those present, gentlemen, you may infer that when they passed this decree every member of the town council was also in tears. Again as to the neighbours, what enthusiasm, what incredible good-will, what anxiety do they display! They have not sent in writing the panegyric they decreed, but have instructed men of the highest reputation, well known to all of us, to be present here in large numbers and to pronounce his eulogy in person. Illustrious citizens of Ferentum² are here in court, and men of the Marrucini no less distinguished than they; from Teanum Apulum and from Luceria you see honourable Roman knights come to speak his praise; from Bovianum and from the length and breadth of Samnium most flattering panegyrics have been forwarded, and men of the highest consideration and renown have also come
 198. in person. And as to those who have property, business

¹ The *laudatio*, or witness to his character by the fellow-townsmen of Cluentius, was here read. For these *laudationes*, cp. note on sec. 56.

² Ferentum (or Forentum, as in Hor. Od. iii. 4. 16) was a town in Apulia: its name survives in the village Forenza, which lies on a hill in the vicinity. A more common reading is Frentani, and is perhaps more appropriate as being the name of the Samnite tribe in whose territory Larinum lay. They inhabited a strip of country along the shore of the Adriatic, south of the Marrucini, who are named next:

For the Teanum in Apulia, cp. sec. 27. Luceria lay due south of it, while Bovianum was in the heart of the Samnite territory.

avocations, or grazing stock ¹ in the territory of Larinum, honourable men of the highest distinction, it were hard to speak of their solicitude and anxiety. Few, I think, are loved by one as this man is by them all. How sorry I am that L. Volusienus, a man of the greatest distinction and worth, is not present at this trial! Would that P. Helvidius Rufus, an eminently illustrious Roman knight, could be here when I speak his name! Sleepless day and night in my client's interests, while he was instructing me in the case he fell seriously and dangerously ill; and yet even in his illness he is as anxious about the defendant's safety as about his own recovery. His evidence and eulogy will make you aware of no less enthusiasm on the part of that excellent and honourable senator Cn. Tudicius. Of you, P. Volumnius, I speak in the same expectation but with greater reserve, inasmuch as you are on the jury in this case. To be brief, the whole neighbourhood, I tell you, cherishes the greatest goodwill towards the defendant. Their unanimous enthusiasm, solicitude, and painstaking care; my exertions—and I have pleaded this case from beginning to end single-handed as I have long been wont to do; and also the justice and clemency of this court, are combated by one woman, the defendant's mother. And what kind of mother? You see how she is carried along in all the blindness of cruelty and crime. No depths of dishonour have ever proved a hindrance to her lust. In the depravity of her mind she has overturned in the foulest manner all the binding ordinances ² of society, too infatu-

LXX.

199.

¹ *Res pecuarias*, to which the MSS. *pecuniarias* has been altered, on the ground that Samnium was a great district for pasturage.

² This expression, though probably including the perversion of relationships referred to below, has a more extended meaning.

ated to be called a human being, too outrageous for the name of woman, too unnatural for that of mother. Aye, and she has ever confounded the designations of kinship as well as the name and ordinances of nature. Her son-in-law's wife, a step-mother to her son, the mistress of her daughter's husband, she has, in a word, sunk so low as to have nothing left her in the likeness of man except her external form.

200. Now by your hate of crime, gentlemen, debar a mother from access to the life-blood of her son. Inflict on her who gave him birth the pang, incredible as it is, of seeing the deliverance and triumph of her offspring; suffer the mother to depart vanquished by your justice, and so deprive her of the joy of being bereft of her child. And again, by that love which, if true to your nature, you have for honour, truth, and virtue, raise at length from the ground the suppliant now before you, after so many years of groundless prejudice and peril. Now for the first time since the avaricious conduct of others fanned that prejudice into flame has he begun to take heart, and in reliance on your impartiality in some degree to breathe again, forgetting fear. His all is in your hands; many there are who desire his deliverance, but you alone are
- 201 able to secure it. *Habitus* entreats you, gentlemen, and beseeches you with tears not to sacrifice him to the prejudice which in courts of law ought to be of no avail; not to the mother whose vows and prayers you must put far from your minds; not to the execrable *Oppianicus*, a convicted criminal now in his grave. But if at this trial the stroke of some disaster lay my guiltless client low, then will he verily in his wretchedness—if indeed he continue to live, which it will be hard for him to do—often bitterly lament that the poison of *Fabricius* was
- LXXI.

ever detected. For had it not been exposed at the time it would have been to this most miserable man, not poison, but the antidote of his many sorrows ; aye, and his mother might perchance have followed in his funeral procession, counterfeiting grief for the death of her son. But as it is what good will have been done, save that it will seem as if his life was preserved only for affliction out of the midst of deathful snares—only that in death he might be robbed of the sepulchre of his fathers? Long enough 202. has he been in trouble, gentlemen ; years enough has he suffered from prejudice. None save her who gave him birth was ever so bitter against him but that we may believe his vengeance is now fully satisfied. Do you who are just towards all men, who tenderly sustain all those that are cruelly assailed, preserve A. Cluentius. Restore him to his townsmen unharmed ; give him back to the friends, the neighbours, the guest-friends of whose zeal for him you are witnesses ; lay him under an eternal obligation to yourselves and to your children. To you, gentlemen, this appertains, to your dignity, your clemency ; with justice do we require you to deliver at last from his distresses a most worthy and altogether guiltless man, and one who to very many people is most beloved and dear. Thus will you give all men to know that, while prejudice may find a place in public meetings, truth reigns supreme in courts of law.

APPENDIX.

SOME REMARKS ON THE TEXT.

CLASSEN has, I think, successfully demonstrated that where the Turin palimpsest fails, his MSS. A and B (S and T in Orelli's edition) must on the whole (though not absolutely without exception), be made the basis of the text.

Some valuable readings are preserved in quotations made from the speech in antiquity.

- § 5. Quint. ix. 3. 85, *ponatur*, rightly as against A and B, *puniatur*.
- § 11. Quint. iv. 1. 79, *repetam*, perhaps rightly, with vulgate, as against *petam* of A and B.
- § 15. Quint. iv. 2. 105, *timuisse* rightly as against A B and many other MSS.
- § 32. Quint. viii. 4. 11, per alieni corporis *vim* atque cruciatum, as against *mortem* of MSS. This may possibly be right, *vim atque cruciatum* = violent torture. Comp. Verr. v. 138, *mortem cruciatumque*, which perhaps = a death of torture.
- § 98. I have discussed this passage in the *Journal of Philology*, vol. 8, p.p. 245-6; but do not feel sure that I am right.
- § 143. Quint. v. 13. 47, *nimirum* tibi istud lex ipsa renuntiavit. Here A and B have *sed et nimirum*. I suspect Quint. is right, and that *sed et* is a corrupt repetition of the preceding *est*.
- § 166. Quint. ix. 2. 48, *hæc pluribus* dicerem. MSS. *pluribus verbis*. I suspect that Quint. is right.
- § 167. Quint. ix. 3. 37, *quæ porro* interceptio poculi. More idiomatic than the MSS. reading *quæ deinde* i. p.
- On the other hand in 173 the MSS. reading is to be preferred to that of Priscian, x. p. 520 (Keil), *celerius potius* comestum. . . *permaneret*: and so it is in 70 to that of Rufinianus, p. 44, Halm, *dem iudicibus, mihi igitur nihil quæretur?*

Orthography of the Proper Names as given in the best MSS. supported or not by inscriptions or otherwise.

NOMINA.

- Ambivius*, C. I. L. (Corpus Inscr. Latinarum), 6. 200 (A.D. 70), 2284.
Ancharius, C. I. L. 2. 531, 3 often, 6. 1056: *Ancarius*, 2. 1690.
Asellius, C. I. L. 2. 535, 6. 1056, *al.*
Asuvius, C. I. L. 6. 200 (70 A.D.): *Asuia*, C. I. L. 1. 1204.
Cannutius, C. I. L. 5 often: 3 *ter.*
Caulius, C. I. L. 3, D. xxi. foll., 7. 1193.
Cetius, C. I. L. 3. 4107. 4 often.
Considius, C. I. L. 3. 2296, 5. 3105, 1. 480.
Decidius, C. I. L. 5. 1187, 1188.
Matrinus, C. I. L. 3. 1301.
Orceuius, C. I. L. 1. 134, 135, 1541: *Orcivius*, C. I. L. 5. 8152:
Orcivia, C. I. L. 5 *ter.*: *Orchivius*, C. I. L. 3. 2082.
Poplicius, C. I. L. 1. 635, 1465: *Foblicius*, C. I. L. 1. 454:
Publicius, C. I. L. 1. 943.
Rupillius, C. I. L. 1. 1421.
Safinius, C. I. L. 1. 1471.
Sasius, C. I. L. 5. 4943, 4967. Apparently the lady's name was *Sasia*, not *Sassia*. Arusianus p. 494 (Keil) quotes "*Si Asia* (= *Sasia*) huius mater Habiti." In Quint. iv. 2. 105, A (a good MS.) has *Osiat* = *Sasiae*.
Tudicius, C. I. L. 5. 2515, 2712.

COGNOMINA.

- Cappadox*, C. I. L. 2. 224.
Gallicanus, C. I. L. 2. 4115, 1709; 3. 42, 3084.
Geta, C. I. L. 1. 486 (B.C. 54); 3. 905, 6179, *al.*
Gutta, C. I. L. 4. 1093 (Pompeii). *An Oscan name.* See Appian, i. 90 (Mommsen, *Unteritalische Dial.*, p. 253).
Habitus, C. I. L. 4. 1457, 1762; 7. 1336 (525): *Abitus*, C. I. L. 7. 1336 (501-2).
 The word apparently = *fat*.
Senator, C. I. L. 3. 3591, 6150 (35); 5. 4724. Probably a mere *cognomen* in the Pro Cluentio.

H. N.

